

# Radicalizing Rights: Basic Liberties and Direct Action

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## Abstract

Strikes often lack a reasonable chance of success unless they violate some basic liberties (of contract, movement, etc.). This creates a dilemma for liberal democracies that recognize a right to strike: either the right is toothless, or the basic liberties do not have priority and so are not basic. Alex Gourevitch argues that grounding the radical right to strike in an interest in freedom resolves the dilemma. We point out an ambiguity in this solution: it either does not solve the dilemma, or it tacitly presupposes that there is no dilemma. However, we go on to show that a modified, dynamic conception of the radical right to strike can ground its priority, albeit at the expense of the basicness of certain static basic liberties. What is more, we argue that this generalizes to other forms of direct action, such as the recent Black Lives Matter blockades and those at Standing Rock.

## Keywords

basic liberties, direct action, oppression, right to strike

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## Introduction

In 2016, Native American activists established Sacred Stone Camp at the Standing Rock Reservation. In the words of its founder, the main purpose of the camp was “to stop [construction of] the [Dakota Access] pipeline through prayer and non-violent direct action” (Brave Bull Allard, 2016). In 2005, union activists in Atlanta “blocked deliveries and entry into the building” of a company they were targeting (*Fidelity Interior Constr. Inc v. Southeastern Carpenters Reg’l Council*, 2012). Both initiatives were incompatible with the liberal legal order, and so incurred severe sanctions. In this article, we want to show that there is an important sense in which those two kinds of direct action are normatively equivalent. If we are right, those who are enthusiastic about the Standing Rock blockade should become less squeamish about coercive picket lines in industrial disputes, and vice versa.

We approach the issue of direct action through a discussion of the right to strike. Liberals tend to see workers’ right to strike as fully compatible with the framework of

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individual liberties that underpins the capitalist mode of production (Gourevitch, 2018). The flipside of such a view is that workers have no right to use coercive strike tactics insofar as they clash with basic liberties of property, contract, movement, and so on. In many labor disputes, and especially those fought by easily replaceable workers, that is tantamount to saying that strikers cannot use the tactics they need in order to have a reasonable chance of success (Gourevitch, 2018: 906). Radicals, by contrast, tend to see the rights in actually existing capitalist societies as an elastic and even unstable arrangement, hopefully to be overcome by a new order (De Cleyre, 2004; Goldman, 1998; Gourevitch, 2018; Malatesta, 2014; Marx, 1992). So, they typically push for justifications of striking that are irreconcilable with rights they see as ideological liberal pieties.

However, in a recent, important series of articles, Alex Gourevitch proposes a new account of the foundations of the right to strike that seeks to explain how the interest in freedom that at least partly grounds the liberal basic liberties also entails a radical view of the right to strike—that is, one encompassing the use of coercive tactics (Gourevitch, 2015, 2016, 2018). Gourevitch claims that the right to strike and the basic liberties share a foundation in the interest in freedom,<sup>1</sup> which in turn grounds a right to resist oppression (the “unjustifiable deprivation of freedom”; Gourevitch, 2018: 907). The interest in freedom, then, explains the right to strike’s priority over the liberal basic liberties of contract, movement and so on, which the right to strike is bound to violate if it is taken to encompass the use of coercive tactics.

In this piece, we argue that if we want to recognize the promise of the idea of grounding the right to strike in the interest in freedom, then we cannot hold on to a view of society as fundamentally regulated by a system of liberal basic liberties. We arrive at this conclusion by showing that, within Gourevitch’s own framing of the problem, one must, on pain of contradiction, either reject the right to strike coercively or reject certain liberal basic liberties whenever they conflict with that right. Those liberties cannot be *basic*, if we are to have a right to strike, because they can no longer have general priority over other rights.

The force of this argument can be interpreted in two different ways. On the one hand, it can be read as clearing up an ambiguity in Gourevitch’s argument with respect to the nature and resolution of the conflict between liberal basic liberties and the right to strike. On the other hand, it can be read as arguing that Gourevitch’s solution to the conflict does not work, insofar as that solution either presupposes that there was no real conflict to begin with or that it fails to solve the problem it began with. Either way, what is important to us is, first and foremost, the recognition of the ineliminable conflict between seeing liberal basic liberties as basic and recognizing people’s right to resist oppression with strikes and other forms of direct action.

But we also argue that there is an upside to recognizing this ineliminable conflict. Once the oppression-based account of the right to strike is fully decoupled from what we call the *static* liberal framework of rights and acknowledged to be part of a *dynamic* radical account of rights, it can be extended to justify a much broader range of direct actions that includes coercive strikes, yet extends beyond them. Direct action is notoriously hard to define and is often defined simply as an individual or a group seeking to achieve their ends through their own power, rather than relying on some higher authority to do so on their behalf. The prototypical example of such a higher authority is the state, but also includes, for example, appealing to the moral sense of more powerful and privileged groups such as slave masters, capitalist, monarchs, or philanthropists. Direct action is therefore often defined by the kind of politics that it isn’t, that is, electoral politics or

politics of appealing to the benevolence of the wealthy and powerful. So understood, direct action includes a wide variety of tactics like strikes, sabotage, boycotts, blockades, occupations, and much, much more. For simplicity's sake, we will focus on specifically non-violent forms of direct action, which we discuss further below.<sup>2</sup> Perhaps unsurprisingly, these tactics are traditional fixtures of numerous recent movements, including the labor movement, the suffragettes, anti-slavery movements, decolonial movements, and student movements. The ubiquity of direct action as a tool for movements of emancipation lends our article a great deal of contemporary importance.

As such, our argument has a number of upshots. First, it has the benefit of reconstructing, in contemporary terms, one of the traditional justifications of a broad range of direct actions, which historically underpinned the activities of the radical labor movements of the previous century-and-a-half (Darlington, 2013; Thorpe, 1989; van der Linden and Thorpe, 1990) and were advocated by some of its most important and influential theorists (De Cleyre, 2004; Goldman, 1998; Gordon, 2019; Gourevitch, 2018; Kinna, 2019; Malatesta, 2014; Marx, 1992; Parsons, 2004; Pouget, 1910). Doing so, we can re-cast or re-contextualize the current discussion of the right to strike in terms of a broader set of concerns about human emancipation and the appropriate tools for achieving it. The radical labor movements of the past used various forms of direct action not only to win labor disputes but also to fight anti-immigration laws (e.g. the Argentine Regional Workers' Federation (FORA)), advance women's reproductive rights in the face of legal and extra-legal persecution (e.g. the Free Workers' Union of Germany (FAUD) and the US Industrial Workers of the World (IWW)), and combat systemic racism and fight for free speech rights (e.g. the US IWW) on the basis of a normative common ground of universal human emancipation—advancing the freedom for all persons—through their own movements of self-emancipation. Key to this idea was the role of direct action as the means by which oppressed groups would struggle and win their own emancipation, rather than rely on states or governments to act on their behalf, which these radicals argued was paternalistic and ineffective. Finally, reconstructing these ideas by means of a dynamic account of rights allows us to speak directly to a much broader range of contemporary struggles and their claims, emphasizing their potential common ground in terms of both normative commitments and the tactics they use to achieve them.

## Gourevitch's Dilemma

Gourevitch introduces his argument as a solution to a practical dilemma for real-world liberal democracies:

. . . the right to strike [coercively<sup>3</sup>], when exercised by the majority of worst-off workers, seems to conflict directly with the basic economic and civil liberties of large numbers of other people and with the background legal order that secures those liberties. To resolve this dilemma, we need to know what has moral priority: the basic economic and civil liberties, as they are enforced in law, or the right to strike (Gourevitch, 2018: 906).

It is worth beginning by dispelling a possible source of ambiguity. It is not always clear whether the rights that Gourevitch is concerned with are conceived of as moral rights or descriptive legal rights.<sup>4</sup> This may be due to the interaction between the basic liberties themselves and the fact that their basicness must be embedded in a legal order as a form of lexical priority over other rights. If they are merely legal rights, then whether

they should be trumped by the moral right to strike is a matter for how one construes the relationship between the duty to obey the law and the duty to uphold the moral rights of others—for example, through the debate on civil disobedience, revolution, or the like. In this case, there would be no dilemma because we would be dealing simply with a law conflicting with the demands of morality, not of competing rights with the same normative standing. However, if we interpret the rights that Gourevitch is concerned with to be strictly moral rights that apply in the real world, we contend that either he fails to resolve the dilemma he poses or that, once the facts of capitalism are properly understood, there is no dilemma to be resolved after all.<sup>5</sup>

We can reconstruct Gourevitch's account of why the basic liberties are normally seen as having priority over other rights as follows:

1. If a right provides less oppressive social relations, then it has priority over any other rights.
2. Rights to basic liberties provide less oppressive social relations in all cases.
3. (A) Basic liberties have priority over any other rights in all cases (by 1 and 2).

However, Gourevitch claims that we (should) recognize a right to strike, despite the fact that it conflicts with the priority of some basic liberties. His argument for this can be summarily reconstructed as follows:

4. In certain cases (CC), a right to strike coercively provides less oppressive social relations.
5. (B) In CC, right to strike has priority over any other rights (by 1 and 4).

Let us be clear about what we mean by “in certain cases (CC)” here. The cases in question do not refer only to particular instances of, for example, workplace disputes or wage negotiations, such that the right to strike extends only to some specific disputes where applying it provides less oppressive social relations. Rather, the cases in question here refer to particular forms of society, such as contemporary capitalist societies. On this view, Gourevitch's point is that having the right to strike generally tends to generate less oppressive social relations in capitalist societies. This may not apply to other forms of society, such as that of the Iroquois Confederacy or the free self-managed communes of the future. This matters for two reasons. First, on the latter reading, but not the former, even strikes that are doomed to failure are still, in principle, acceptable exercises of the right to strike. Second, it means that what is being justified here are not individual strikes, but rather the general right of workers in certain societies to engage in the social practice of striking.<sup>6,7</sup>

Since Gourevitch also recognizes that, in the relevant cases, the right to strike violates some basic liberties, (3) and (5) are in contradiction. That is to say, in the cases Gourevitch considers—capitalist societies featuring workplace disputes requiring coercive tactics to have a reasonable chance of success—it would seem that *both* the right to strike and the basic liberties have priority over other rights and conflict. Note that the dilemma here arises not from the conflict of rights per se, but from the *conflict of their priority*.<sup>8</sup>

Gourevitch argues that his radical approach to justifying the right to strike solves this problem, because in the cases that he is concerned with the basic liberties do not in fact provide less oppressive social relations, but instead secure and maintain workers' oppression. By contrast, in CC, the right to strike does provide less oppressive social relations by enabling workers to effectively reduce this oppression.

This argument is somewhat ambiguous. Depending on how it is interpreted, *either* it fails to show that the right to strike has priority over the basic liberties *or* there is no dilemma for it to solve. Let us explain. According to Gourevitch, the right to strike takes priority in cases where it conflicts with some basic liberties because it provides less oppressive social relations, whereas the basic liberties do not do so and in fact secure workers' oppression. However, this claim implies that, in those cases, the basic liberties do not provide less oppressive social relations and therefore that (2) is false. Gourevitch writes that in many cases, rather than "the protection of" certain liberal basic liberties securing "more or less non-oppressive, non-exploitative relations of social cooperation," their "legal protection achieves the opposite," in contrast to the right to strike with which they conflict (Gourevitch, 2018: 10). It is worth noting that, on Gourevitch's view, reducing oppression "is why the right to strike would have priority over some of these basic economic and civil liberties, like property rights, freedom of contract, and freedom of association" (Gourevitch, 2018: 10). For both Gourevitch and ourselves, there are liberal basic liberties which, properly understood, neither maintain and secure relations of oppressions (such as freedom of conviction, speech, and press) nor conflict with a radical right to strike (or, for that matter, more ambitious forms of direct action). We can thus distinguish between liberal basic liberties that often secure and maintain relations of oppression and others which do not. In general, Gourevitch is clear that his target is not all the liberal basic liberties or their priority, but rather those that maintain oppression under current conditions and conflict with the right strike, such as "property rights, freedom of contract, and freedom of association" (Gourevitch, 2018), and we follow him in this. On our and Gourevitch's view, many important liberal basic liberties retain their priority—for example, freedoms of speech, press, and conviction—because they do not conflict with the right to strike. This also holds true for the right to direct action (RtDA), which we discuss below. This is why many radical unionists, from Karl Marx and Rosa Luxemburg to Emma Goldman and the IWW, saw no conflict between their advocacy of the right to strike and an absolute commitment to freedoms of speech, press, conviction, and so on. The general point is that the liberal parlance of "basic liberties" obscures important normative differences between various kinds of liberties. We cannot discuss all those differences in detail here, but it should be relatively easy to see how, for example, private property is likely to often enable oppression, whereas freedom of contract will vary depending on context and institutionalization, and freedom of speech and of the press will tend to be emancipatory—although exceptions can arguably be countenanced. At any rate, Gourevitch's argument for why the right to strike takes priority in CC is that in those cases some of the basic liberties do not provide less oppressive social relations—quite the contrary. If (2) is false, then (3) fails to follow and the basic liberties do not have priority in the relevant cases (though they may retain their priority in other cases, namely those where they do provide less oppressive social relations). By contrast, Gourevitch contends (and we agree) that (4) does hold in CC and therefore that (5) does as well, as a result of which the right to strike has priority over other rights, including certain basic liberties, in those cases.

Let us now consider whether this solves the liberal dilemma Gourevitch offers. Recall that the dilemma arises not merely from the basic liberties and the right to strike conflicting, but specifically from them conflicting *and having priority in CC*. We have just seen that Gourevitch makes the descriptive claim that, in those cases, the basic liberties do not in fact provide less oppressive social relations, but instead secure workers' oppression.

As we have also seen, it follows from this that the argument for the basic liberties' priority is unsound. Now, if the basic liberties do not have priority in the relevant cases,

then they cannot conflict with any competing rights that do have priority in those cases—such as the right to strike. Consequently, if Gourevitch's *descriptive claim* that in the real world the basic liberties do not provide less oppressive social relations in the cases he is concerned with is correct, there is, in a strict sense, no ethics, no dilemma for his radical conception of the right to strike to solve to begin with. That descriptive claim implies the falsity of (2), in which case the liberal horn of the dilemma is simply rejected, and we are left only with instances of a basic right (to strike) overruling certain non-basic rights. Gourevitch's radical account of the right to strike, properly understood, therefore entails the wholesale rejection of the basicness of some of the liberal basic liberties in the real world, because, if he is correct, they do not have general priority over other rights.

Once this ambiguity in Gourevitch's argument is cleared up, we can see that the force of his argument is less to solve a conflict between two sets of rights whose priority conflicts and more a matter of arguing that under capitalism certain liberal basic rights do not, in fact, have priority at all, because in these cases they secure rather than protect against oppression. It is possible to respond to this by rejecting Gourevitch's descriptive claim and instead accepting that, in the cases he is concerned with as elsewhere, the basic liberties provide less oppressive social relations. Then (2) can be retained, (1)–(3) would be valid, and lemma (A) would be reinstated. That would again produce Gourevitch's dilemma of both the basic liberties and the right to strike claiming priority in the cases he is concerned with. The problem with this, of course, is that it does not provide a resolution to the dilemma after all, since there is now no reason why, in those cases, the right to strike should take priority over some basic liberties when they conflict.

Here is another way to put this point, which paves the way for our own contributions. Gourevitch says that the basic liberties and the radical right to strike share a normative grounding, because ultimately the right to resist oppression is an interest in freedom.<sup>9</sup> The dilemma arises because, in CC, this common grounding yields diverging rights (and correlative duties). Liberals and social democrats, Gourevitch argues, “fail to properly identify the nature, depth, and scope of the class-based oppression in existing capitalist societies,” so they do not see that the right to strike is not *really* in conflict with the basic liberties, since it shares their foundation: what looks like an intractable conflict of rights dissolves once we appeal to the common normative ground of those rights (Gourevitch, 2018: 910). If we are right, the only way that this argument works—and it does—is by rejecting the priority of certain liberal basic liberties, because for the basic liberties to be basic they cannot lose their general priority, not even for the sake of “liberties not yet enjoyed” (Gourevitch, 2018).<sup>10</sup>

There is something important to Gourevitch's hint at a connection between the radical right to strike and a *future-oriented perspective* that we wish to develop. As we will see in the next section, the role of the liberal basic liberties with respect to freedom is static, whereas the role of the radical right to strike is dynamic, and this contrast has some major implications for not only how we think about what rights are and which rights we have, but also for the role of rights in political struggles.

## A (More) Radical Solution

We will now provide a comradely contribution to Gourevitch's argument, that further develops of the theoretical underpinnings of the radical right to strike that radicals should find compelling. Our main contention is that the radical conception of the right to strike, properly understood, undermines the liberal basic liberties not only in the cases of

workplace disputes we considered above, but across a much broader range of cases. As a result, workplace disputes do not *just* represent a special case where the right to strike and some basic liberties conflict. Rather, they are symptomatic of a general incompatibility between liberal basic liberties and a radical RtDA grounded in an interest in freedom.

We agree with Gourevitch (2018: 910) that the radical right to strike is best grounded in an interest in human emancipation, “as an (at least implicit) demand for self-emancipation or the winning of greater liberty through one’s own efforts.” And, as we have seen, it is justified in cases where it has a realistic chance of reducing oppression. We also agree that rights which provide less oppressive social relations take priority over other rights if and when they conflict.

Once this is granted, and we consider the kinds of coercive acts involved in creating and enforcing a picket line—Gourevitch’s standard example of a permissible coercive strike tactic—we see that these rights extend far beyond the limited cases that Gourevitch discusses.

To begin to see why that is the case, it is worth disambiguating what “providing” less oppressive social relations might mean. Roughly, on a *static* reading, it amounts to safeguarding or constituting less oppressive social relations. On a *dynamic* reading, however, “providing” less oppressive social relations refers to creating less oppressive social relations in the foreseeable future (e.g. by causing bosses to provide less oppressive workplace conditions). The radical right to strike is centered on the dynamic sense, while those liberal basic liberties that conflict with it are centered on the static sense. As we have pointed out above, on our and Gourevitch’s view, many important liberal basic liberties, and static ones at that, retain their priority—for example, freedoms of speech, press, and conviction—because they do not maintain oppression and do not conflict, in general, with the RtDA. Some liberal basic liberties, like freedom of conviction, do not maintain oppression, because they play no role in maintaining relations of oppression and unfreedom in our society, and it is plausible to suppose that societies without them will be less free, *ceteris paribus*, than those with them. This also holds true for the RtDA, which we discuss below. This is why many radical unionists, from Karl Marx to Emma Goldman and the IWW, saw no conflict between their advocacy of the right to strike and an absolute commitment to freedoms of speech, press, conviction, and so on. In other words, although there will often be tensions and conflicts between certain static and dynamic rights, it is not the case that all dynamic rights will inevitably conflict with all static rights in all cases. In fact, in many cases dynamic rights are exercised in order to secure important static rights, as when the IWW employed a variety of (illegal) forms of direct action in order to eventually win certain rights to free speech in the United States.

On the radical view, the right to strike is justified because it is a realistically effective tactic to reduce oppression and further human emancipation in the foreseeable future.<sup>11</sup> So part of our argument in the previous section can be read as saying that the future-oriented, dynamic radical right to strike is incompatible with the static nature of certain liberal basic liberties, because prioritizing the right to strike erodes their basicness, as we noted above.

There is a significant upside to that incompatibility, at least from a radical perspective. The argument for the right to strike can be extended beyond workplace disputes and other cases of industrial action, to all structurally homologous situations. It applies to all situations in which the same tactics that strikes make use of can be used with a realistic chance of providing less oppressive social relations and thereby furthering human emancipation. Recall that Gourevitch holds that the right to strike has priority in all cases where coercive

strike tactics have a realistic chance of providing less oppressive social relations. For the sake of simplicity, we will focus only on one of the paradigmatic cases of coercive strikes mentioned by Gourevitch, namely, a particular form of direct action tactic that he labels coercive pickets. Call the right to employ these tactics the RtDA. Gourevitch's argument therefore commits him to the following:

- I. In cases<sup>12</sup> where the tactics of coercive picket lines generally have a realistic chance of providing less oppressive social relations, the right to strike has priority over any other rights.

He also holds that:

- II. These situations include all CC.

Thus:

- III. In CC, the right to strike has priority over any other rights (by I and II).

Gourevitch's radical conception of the right to strike therefore, properly understood, entails the RtDA (and vice versa, as we will see shortly). In other words:

- IV. In all cases where the right to strike has priority over any other rights, the RtDA has priority over any other rights.

Therefore:

- V. In all cases where the tactic of coercive picket lines has a realistic chance of providing less oppressive social relations, the RtDA has priority over any other rights (by I and IV).

Now, many other forms of non-violent direct action use these exact tactics (e.g. the Civil Rights Movement erecting and enforcing a road block or decolonial activists blockading the offices of a colonial administration): activists create a barrier and coercively bar certain people from crossing that barrier, in order to provide less oppressive social relations.

Consider again the protest over the construction of the Dakota Access Pipeline, in which thousands of Native American activists and allies camped on sites chosen to block construction of the planned pipeline, in violation of property rights, freedom of contract, and occasionally other liberal basic liberties. Such actions are perhaps more common than coercive strikes nowadays, at least in countries such as the United States, where legislation and judicial precedent favor the priority of the basic liberties and thus outlaw coercive strikes (White, 2014). The legal status of normatively homologous forms of non-violent direct action is still more fluid. If we are right, a right to resist oppression justifies such coercive tactics in all cases where, in general, such tactics have a realistic chance of providing less oppressive social relations.

Gourevitch's argument is supported by a rich account of the oppression specific to the organization of work such that the right to strike can be credibly understood as a form of the right to resist oppression for the sake of the interest in freedom (Gourevitch, 2015,



2016). We can hardly summarize them here, but insofar as comparable accounts are available with regard to other forms of oppression—for example, racial or settler-colonial oppression—Gourevitch’s justification of the right to strike can be extended to an RtDA. Crudely, to take the case of the Standing Rock Reservation, the account would show how the history of settler-colonial expansion onto Native lands is tied up with basic liberties in the economic domain—private property, freedom of contract, and so on (Goldstein, 2008; Whyte, 2017, 2018). The basic liberty to private property provides a clear-cut example. Consider, say, the landmark 1823 case of *Johnson v. M’Intosh*, which established a key legal precedent for the settler appropriation of Native lands: the very idea of property in land was tied with European “discovery,” thus foreclosing the possibility of equivalent Native entitlements (Goldstein, 2008: 838–840). This history is a history with palpable contemporary reverberations, at least if we take seriously the claims of the Standing Rock movement to the effect that they saw the pipeline as “another effort by corporations—backed by the power of the government and expected support of Trump—to trample indigenous people as they have for ‘hundreds of years of colonial oppression’” (Sullivan, 2016).<sup>13</sup> To grasp the link of that oppression with the issue of basic liberties, it is important to note how a large part of the Dakota Access Pipeline dispute concerned exactly the issue of private property rights. The pipeline’s proponents relied on the fact that currently the pipeline would not cross any land currently owned by the Standing Rock Sioux, whereas the protesters stressed “the long histories of nonconsensual land dispossession along the pipeline’s route and the efforts of the Oceti Sakowin over many years to maintain collective self-determination against multiple threats generated by the US. Sedimented [sic] dispossession” (Whyte, 2018: 139). And, insofar as this history is comparable to the history of the role of the basic liberties vis-à-vis labor relations, a right to coercively reclaim space to resist settler-colonial oppression in defiance of private property is homologous to Gourevitch’s right to coercively picket to resist workplace oppression in defiance of freedom of contract. The argument applies to Native American or Black activists blocking roads just as much as it does to union activists blocking factory doors. If one thinks that protests such as the ones over the Dakota Access Pipeline are justified, then one should also accept a right to use coercive strike tactics, and vice versa.

To be sure, further questions arise regarding the moral and political costs involved in resisting oppression by coercive means. Our claim is simply that the costs incurred by exercising the radical right to strike defended by Gourevitch are homologous to those incurred by exercising the broader RtDA, just as the tactics are homologous. That point is abstract by design. The actual costs will have to be considered contextually for any given case. A general, historical observation may go some way toward assuaging at least part of those concerns. The argument we offered here is an attempt to systematize a theme from the history of direct action–based political movements, which have always seen strikes as a kind of direct action, and thus their justifications to be roughly the same, *mutatis mutandis* (Darlington, 2013; Thorpe, 1989; van der Linden and Thorpe, 1990). Indeed, the very concept of direct action originated in radical movements which consistently referred to strikes as a paradigmatic case of direct action alongside a vast array of other tools they argued were both normatively justified and empirically effective (De Cleyre, 2004; Gordon, 2019; Kinna, 2019; Pouget, 1910). So, in a sense, we are arguing for using widely accepted claims about the right to strike as a way of going back to the broader understanding of the nature of direct action that was common among the biggest and boldest radical working-class movements of the past. This should prove important for

supporting a much broader range of actions, as these movements historically did (Azzellini and Kraft, 2019).

In short, the radical justification of the RtDA applies not just to workplaces and industrial disputes but, as the examples show, much more broadly. From the radical point of view that we share with Gourevitch, there is no normatively relevant difference between these cases beyond the wage relation and the more restricted set of conditions Gourevitch considers. After all, the point of these rights is to provide less oppressive social relations, not just less oppressive wage relations.

## Conclusion

We have defended two main claims. First, that there is a general conflict between the radical conception of the right to strike and some liberal basic liberties, because it entails that those and only those liberal basic liberties which conflict with the RtDA in any situation lack priority. If this is the case, these liberal basic liberties are no longer *basic* rights in any salient sense, because they no longer have a general priority over other rights.

This conclusion is disjunctive. It does not entail that the radical view should be preferred—although we think it should. Accepting our argument only shows that the radical right to strike, properly understood, cannot be reconciled with the mainstream liberal capitalist understanding of basic liberties. That entails that one should *either* reject those basic liberties which conflict with the right to strike *or* reject the right to strike whenever it conflicts with some liberal basic liberties.

Second, we argued that if one accepts a dynamic right to strike grounded in the interest in freedom and the resulting right to resist oppression, then one is also committed to accepting a wider RtDA, which affords the use of a range of non-violent coercive tactics for the sake of fostering human emancipation in contexts where they have a reasonable chance of success. In fact, the argument from homology can proceed from the right to strike to the RtDA, or vice versa. Those who see that static basic liberties can reinforce oppression and are attracted to the idea of liberties grounded in resistance to oppression should consider embracing not just a radical right to strike but the wider RtDA.

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## Notes

1. That is not to say that for Gourevitch the basic liberties are always freedom-protecting, but just that that is how their priority is generally grounded: “[the basic liberties’] priority is normally explained by the thought that, *ideally speaking*, the protection of those liberties creates more or less non-oppressive, non-exploitative relations of social cooperation” (Gourevitch, 2018: 10; emphasis added).

2. The concept of direct action has a complicated relationship with the rather different concept of civil disobedience (Brownlee, 2013). To mention just three examples, direct actions, unlike most forms of civil disobedience, need not violate any laws (as when Proudhonist mutualists seek to develop and grow a cooperative economic sector outside of and eventually replacing capitalism), though some of them (e.g. many strikes) do; unlike civil disobedience, direct action need not be addressed to the majority (as when workers work-to-rule to lower their employer's profits until their grievances are addressed, often without addressing anyone apart from their employer); and unlike civil disobedience, direct action need not be aimed at changing law or policy (as when workers striking for higher wages are not necessarily—though they may also be—advocating for any changes in the law or state action of any kind), though it may be (e.g. if workers carry out a general strike for an 8-hour day). There is, of course, plenty of overlap, insofar as a great deal of actions would be considered both instances of civil disobedience and instances of direct action, such as the Montgomery Bus Boycott. For reasons of space, we will not be exploring these contrasts or comparisons further here, but must leave that work for elsewhere.
3. We follow Gourevitch here:

classic coercive tactics are sit-downs and mass pickets. Sit-down strikes involve occupying the workplace so that no work can be done. Mass pickets are when strikers and their supporters surround a workplace with a wall of picketers so that no people or supplies can get in or out. For the majority of relatively easy to replace workers to go on strike with some reasonable chance of success they have to use one of these coercive tactics (Gourevitch, 2018: 906).

We also follow Gourevitch in distinguishing between coercion and violence and concerning ourselves exclusively with the former (Gourevitch, 2018: 914*n*).

4. In the same paragraph from which the above quotation is drawn, Gourevitch refers to basic liberties as “a basic principle of *political morality* in any liberal capitalist society” and “basic liberties as they are commonly understood, both in *law* and *political culture*” (Gourevitch, 2018: 906, emphasis added).
5. We use the language of moral rights mainly to engage on a level playing field with Gourevitch and because it is widely accepted in the literature. However, we maintain that the non-legal justification of the relevant rights could be redescribed in terms of political rather than moral values (Jubb, 2019; Jubb and Rossi, 2015a, 2015b; Rossi, 2019; Sleat, 2016), compatibly with the realist account of political possibility we invoke below.
6. Gourevitch writes that “[f]or the right to strike to enjoy its proper connection to liberty, workers must have a reasonable chance of carrying out an effective strike, otherwise it would lose its instrumental value as a way of resisting oppression” (Gourevitch, 2018: 6). This can be interpreted to apply to assessing particular actions or proposals for particular actions. However, we think it is more plausible to read it as making a more general claim that, in a particular kind of society, it must be the case that workers have a reasonable chance “of carrying out an effective strike,” because only if this is true will it be the case that having the right to strike in such a society generally leads to a less oppressive and freer society than its absence.
7. We would like to thank an anonymous referee for prompting us to clarify this point.
8. An alternative approach would be to argue that the right to strike should be a basic liberty (since it is also grounded in freedom). This would entail that basic liberties and/or their legal instantiations can conflict. Presumably, Gourevitch does not take this route because it would then be unclear why the emancipatory potential of the right to strike suffices to ground its priority over the liberal basic liberties (BL).
9. Workers have an interest in resisting the oppression of class society by using their collective power to reduce that oppression. Their interest is a liberty interest in a double sense. First, it is an interest in . . . in not facing certain kinds of forcing, coercion, and subjection to authority . . . Second, and consequently, the right to strike is grounded in an interest in using *one's own* individual and collective agency to resist—or even overcome—that oppression (Gourevitch, 2018: 909–910).
10. This simple formalization should help clarifying the point further. Let F be the interest in freedom and RRO the right to resist oppression.
  - a.  $\forall x (F(x) \Rightarrow BL(x))$
  - b.  $\forall x (F(x) \Rightarrow RRO(x))$
  - c.  $\exists x (RRO(x) \Rightarrow RtS(x))$
  - d.  $\exists x (RRO(x) \Rightarrow (BL(x) \vee RtS(x)))$

The universal quantifier in (a) indicates the basicness of the BL as grounded in an interest in freedom, as in (1)–(3) above. On the face of it, Gourevitch seems to be committed to asserting all four claims, (a)–(d). In

particular, Gourevitch argues that (a)–(c) establish that there are cases (namely, CC) in which our interest in freedom grounds the priority of both liberal BL and the right to strike (RtS). However, Gourevitch also commits himself to the claim that, in certain cases (CC), the liberal BL and the RtS are incompatible. The problem, at least *prima facie*, is that (d) therefore logically contradicts (a)–(c). So, we claim that, given (a)–(c),

e.  $\perp \exists x (RRO(x) \Rightarrow (BL(x) \vee RtS(x)))$

11. We range over different possible interpretations of what counts as a reasonable chance of success in the foreseeable future. The growing literature on feasibility can help filling this gap, which is beyond the scope of this article. See, for example, Gilabert and Lawford-Smith, 2012. We do not, however, rule out a more expansive and prefigurative account of realistic possibility, such as the one recently offered in Rossi (2019). In fact, the defense of direct action we offer here is entirely compatible with the recent literature that explores precisely the link between prefigurative politics—the idea of building the new in the shell of the old—and direct action. See Gordon, 2019; Raekstad and Gradin, 2019.
12. Note again here that “cases” refer not to, for example, particular workplace disputes, but rather to economic conditions, for example, modern capitalist societies.
13. The continuing oppression of Native Americans is well-documented across a range of standard indicators, such as incarceration rates (Franklin, 2013), police violence (Perry, 2002), health outcomes (Gone et al., 2019), and the like (McKinley et al., 2020).

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