

Striking Labor Law's Economic/Political Divide

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Diana S. Reddy, ["There Is No Such Thing as an Illegal Strike": Reconceptualizing the Strike in Law and Political Economy](#), 130 **Yale L. J. F.** 421 (2021).

Amidst summer 2020's momentous uprisings, a terminological tempest briefly arose over what counted as a "strike." In the wake of a police attack on Jacob Blake in Kenosha, WI, the NBA's Milwaukee Bucks, followed quickly by a host of professional athletes, collectively refused to work in solidarity with Black Lives Matter and in protest of anti-Black state violence. Many commentators eschewed the word "strike" on the ground that the actions, like Colin Kaepernick's and other athletes' earlier national anthem protests, were "political" in nature, not focused on the "economic" relationship between the workers and their own employer. That dispute raised fundamental questions about the nature of work and the function of worker organizing, questions addressed more generally by Diana S. Reddy's outstanding recent *Yale Law Journal Forum* essay *'There Is No Such Thing as an Illegal Strike': Reconceptualizing the Strike in Law and Political Economy*.

Reddy's essay provides a magnificent and generative tour through the fraught relationship between the "economic" and the "political" in labor law via the topic of strikes. This wide-ranging and deep piece of scholarship briskly covers and knits together an impressive span of labor history, labor law, and social theory. It should draw the attention not only of labor law scholars but all those interested in the emergent Law and Political Economy movement.

Ultimately, Reddy argues for understanding strikes as "contentious politics." This runs counter to their reigning sociolegal construction as an "economic weapon" in service of collective bargaining over the terms and conditions of strikers' employment. To get there, she tacks back and forth between the actual operations of strike activity over time and the configurations of law and political economy in each period, both constraining and being influenced by strikes and labor movement broadly.

Beginning with the pre-New Deal period, Reddy emphasizes that strikes effectively politicized "the labor question," placing it high on the agenda of government policymaking. Notably, this success came notwithstanding both the illegality of most strikes under the reigning legal regime and the related fact that they often failed to transform struck workplaces in the short-term. Many were crushed by state repression or other means. When the time came during the New Deal for the federal government to act decisively to answer the labor question in terms then-advocated by organized labor, those answers took the form of a conjoined economism and voluntarism; the labor movement had learned to be wary of direct engagement with the state. Critically for Reddy, this led to consolidating the "economic weapon" conception of striking that placed it in opposition to politics rather than one wielded *within* political relationships, as some of the movement's nineteenth century forebears might have framed it.

Reddy traces the "economic weapon" conception as it weaves through a variety of technically distinct doctrinal areas. These include illegal strikes that the state may suppress, unprotected strikes for which the law permits an employer to fire or otherwise sanction workers, and the ambivalent legal status of public sector unions as exemplified by the difficulty of maintaining the political/economic distinction with regard to strikes.

A crucial insight running throughout the article is the incompleteness of any analysis cabined by the doctrine. Reddy notes, for instance, how in the post-war golden years, employers declined to maximally deploy against strikes their own legally authorized “economic weapons,” such as permanent replacement. They held back in keeping with the broader “moral economy” in which they operated. Vice versa, the neoliberal turn of the 1970s, later consolidated by Ronald Reagan’s decision to crush the federal air traffic controllers’ strike, changed the political economic context in which the “economic weapons” framework operated. In other words, that framework relied upon particular political underpinnings for it to work passably well for labor. By obscuring this, the economic/political distinction ultimately weakened labor’s ability to contest broader shifts in the “institutional practices and cultural commitments” (P. 444) that shape legal doctrine’s meaning in practice.

For the same reason, however, Reddy insists that the bounds of legality produced by the economic/political distinction should not be fetishized by analysts and strategists of labor. This point harks back to the illegal but successful strike action of the pre-New Deal era. That hopeful possibility can be amplified by eroding the divide between the labor movement and social movements—a divide the economic/political distinction itself encourages—and by articulating the illegal strike as civil disobedience. Here, Reddy draws fruitfully from some of the prominent, successful recent labor unrest, often of questionable legality precisely because it strays from the “economic weapons” model—the Fight for \$15, the “red state” teacher strikes, and BLM solidarity strikes.

A signal strength of Reddy’s essay is that it operates on both sides of the economic/political divide. Strikes, including through their material effects, do more than act on politics, narrowly construed as a sphere of government policy and action, including the laws that structure work. Instead, the workplace and the streets are themselves sites of politics reducible neither to a state audience or actor nor to exclusively “economic” relationships. This point resonates both with the language of workplace democracy and with Reddy’s earlier point about permanent replacement. It also suggests a fruitful way for analysis of strikes to incorporate broad publics via consumption (or boycotts) in addition to “public opinion” oriented toward voting. In this fashion, Reddy calls for “destabilizing jurisprudential line drawing between the economic and the political in the first place.” (P. 450.) Doing so bears not only on how work is governed, but also on where to look for the democratization of economic life.

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