

Labour Conflicts and Collective Action Today: Introducing a Mediterranean seminar



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Abstract: In introducing the essays built upon the presentations given at the 2025 ECOLL seminar by Elisabeth Brameshuber, Andrea Iossa, Julia López López and Tonia Novitz, this article argues that the traditional economic justification of the right to strike is increasingly inadequate to capture the complexity of contemporary social conflict. Drawing on recent theoretical contributions, it briefly sketches two possible alternative perspectives for reconceptualising the right to strike: an “internal” view grounded in resisting domination in employment relationships, and an “external” view situating the function of strike within the broader public and democratic sphere. The article concludes by briefly raising the possibility that, in an economy where value is increasingly extracted from digital rents rather than from labour, traditional strike action may need to cohabit with other forms of protest and mobilisation in pursuit of a fair redistribution of wealth.

Keywords: Right to strike – Social conflict – Justification and nature of the right to strike - Early Career seminar on cOmparative Labour Law (ECOLL).

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SUMMARY: 1. Navigating the Right to Strike in 2026. – 2. Labour conflicts are dead?... – 3. Long live labour conflicts. – 4. The “Salina papers”.

1. Navigating the Right to Strike in 2026

Talking about the right to strike in 2026 requires navigating a complex landscape, suspended between a retrospective attachment to national rules and principles tailored to twentieth-century industrial conflict, and the urgency of interpreting and governing labour disputes in a world where the voices of workers and unions speak in registers quite different from the past. It is precisely this need to (re)conceptualise the right to strike that prompted the Labour Law Community (LLC) to focus on “The right to collective action” as the theme for discussion at the 3rd Early Career seminar on cOmparative Labour Law (ECOLL), organised in collaboration with the University of Catania and held on the island of Salina from 4 to 8 October 2025⁶.

As an introduction to the five thematic papers presented in Salina - later expanded for publication in the present issue of the journal - it may be helpful to offer a few brief reflections on the very choice of the seminar’s topic: Why discuss collective action today? Is social conflict not a mere vestige of the past? And do existing legal frameworks not already ensure the effective exercise of the right to strike?

To answer these questions, the social and economic context in which the legal notion of strike - and above all, the qualification of the right to strike - cannot be overlooked. All of these dimensions (the social and economic context, the notion, the qualification) are interconnected with one another, and they have significant repercussions on how we understand the specific rules regulating the exercise of the right to strike within a post-industrial scenario that is markedly different from the one in which strikes originally emerged.

By borrowing the title of a famous 1989 article by Philip Schmitter⁷, I will develop these brief introductory remarks along a fairly conventional scheme, often used to analyse long-lasting, cross-generational phenomena: *Labour conflicts are dead? Long live labour conflicts.*

2. Labour conflicts are dead?...

If we stick to the numbers, this century has certainly marked a regression in

⁶ See the report of the seminar by R. Tonelli and C. Valenti, [Building Bridges Across Islands: The ECOLL 2025 Journey Through Collective Action](#) on the Labour Law Community website.

⁷ *Corporatism is Dead! Long Live Corporatism!*, in *Government and Opposition*, 1989, 1, p. 54.

strikes compared to the previous one. It has been quite some time since we witnessed landmark, epoch-changing strikes such as those of the British miners, the U.S. air traffic controllers, or the historic strikes in South Africa and Poland during regime transitions, not to mention those in the United States before the adoption of the NLRA. A decline which is mirrored in the marginalization and undervaluation of the right to strike, as seen in cases like *Viking* and *Laval*, which may be understood as a product of a political and cultural climate regarding the role of social conflict that ultimately shapes legal debates as well.

Trying to look at things from a broader perspective, what we face today is a quite common double narrative that marginalizes the role of the right to strike based on two general assumptions: first, that social conflict no longer exists (a); and second, that social conflict does exist but has evolved, rendering traditional tools ineffective (b).

(a) The assumption that labour conflicts have ended is not exclusively a neoliberal stance. Wolfgang Streeck and Ruth Dukes, for instance, recently argued⁸ that neoliberalism and right-wing populism share a common trait: a profound hostility toward collective action and, primarily, toward the collective subjects themselves—the unions. Beyond neoliberalism and right-wing populism, however, various “post-something” theories (such as stakeholderism and post-liberalism) also tend to emphasize trust, community spirit, common destinies, collaboration, and shared responsibilities, as elements that overcome industrial conflict as we once knew it. Sometimes, the quest for competitiveness is also evoked as something contributing to this climate of collaboration, as has happened in Germany, for instance⁹.

(b) While not denying the existence of social conflict, the second narrative is equally restrictive in its view of traditional industrial conflict as it considers current legal frameworks for the right to strike ill-equipped to handle modern production systems increasingly shaped by the vertical disintegration of the firm—namely, fissured workplaces, complex supply chains, and platformisation. In this context, traditional strikes and the legal rules governing them are seen as obsolete while new forms of social conflict are emerging, including de-unionized collective action and alternative mechanisms for collective dispute resolution, such as recourse to union-led strategic litigation.

⁸ *Labour law after neoliberalism?*, in *Journal of Law and Society*, 2023, 2, p. 165.

⁹ Of course, not everyone shares this irenic and idealized view of employment relationships. While space precludes a full discussion here, those interested in a different perspective might look to a book based on a Tanner Lecture by the political philosopher Elizabeth Anderson, whose title is eloquent in itself: *Private Government: How Employers Rule Our Lives (and Why We Don't Talk about It)*, Princeton University Press, 2017.

3. ...Long live labour conflicts

Despite the aforementioned reductionist narratives, however, collective labour conflicts are far from being mere relics of the past.

First, recent data, especially in the aftermath of the pandemic, indicate a notable resurgence of strike trends on both sides of the Atlantic, with some highly symbolic disputes such as Amazon in the UK, Tesla and the privatization of public transport in Sweden, Boeing and the Hollywood screenwriters' strike in the US.

Secondly, it cannot be ignored that the right to strike is currently supported by an impressive network of quasi-constitutional charters, conventions and international treaties. While it is true that in many cases these rules, both at the national and supranational level, often fall short in providing a solid foundation for the effective exercise of the right to strike¹⁰, this limitation has largely been a matter of interpretation and, for this very reason, and by definition, other interpretations are possible. The real issue, therefore, is not that the existing rules governing the right to strike are outdated; the challenge is rather to find out interpretative pathways capable of adapting and applying that framework to the changing nature of social conflict in contemporary societies.

On what conceptual foundations should an up-to-date understanding of the right to strike be based, one that is anchored in human dignity and freedom of association, operating within a multilayered legal order, and attuned to technological, economic, and social transformations, from digital platforms to global supply chains?

It is almost superfluous to recall here the traditional understanding of the strike as a tool strictly – and exclusively – functional to collective bargaining: «Without the right to strike, the right to collectively bargain is no more than a right to collective begging» as the saying goes, though its precise attribution remains unclear¹¹. In this «orthodox» perspective, strikes are only lawful to the extent that they aim to improve working conditions and are directed toward the immediate employer of those who go on strike. Any deviation from contractual obligations is permitted only within these narrow confines. This is fundamentally the UK classical construction of the right to strike as immunity from the consequences arising from a breach of contract, but ultimately it is also the justification for the right to strike in many other sys-

¹⁰ Namely at EU level where the right to strike, although recognized as a fundamental right, is constrained by what Tonia Novitz has described as a «complex matrix of backdoor regulations» (*The EU and the Right to Strike: Regulation through the back door and its impact on social dialogue*, in *King's Law Journal*, 2016, 1, p. 46).

¹¹ See Elisabeth Brameshuber in this issue.

tems, even those in which it is recognized as a constitutional right: the strike is protected as a fundamental right only as long as it stays within the boundaries of its strict economic justification, as consistently interpreted by courts.

In other words, the strict economic foundation and the contractual instrumentality not only justify the right to strike — they also limit it by reducing it to its conventional role as a device to be used for collective bargaining purposes only.

This brief reminder of the classic construction of the right to strike clearly reveals why identifying the justification of the right to strike, and ultimately its qualification, is not just a theoretical or speculative issue: on the contrary, it has actual effects on the scope and effectiveness of the right itself. Identifying a “lawful strike”, however, cannot depend entirely on a mere statutory or even constitutional recognition of the right to strike, but rather on the identification of its inner foundation or justification beyond its basic instrumental function as a purely economic right aimed at improving working conditions through collective bargaining. This is why labour lawyers should carefully consider the calls coming from other disciplines, such as social and political sciences, where it is clearly emphasised that «the justification of the right to strike matters»¹².

Undoubtedly, when we step into this kind of debate, we risk opening a Pandora's box — one filled with complexities and implications that cannot be fully explored here. However, some considerations, albeit necessarily synthetic, cannot be overlooked if we want to go beyond a strict “black-letter law” interpretation of the nature of the right to strike.

The undue restriction of the right to strike as a tool to achieve fairer working conditions by the immediate employer through collective bargaining has been criticized from two distinct perspectives, which I shall label the “internal” and the “external” point of view in relation to the employment relationship. Both perspectives offer alternative approaches to explain, justify, and qualify the right to strike.

(a) Concerning the internal point of view, reference could be made to the work of Alex Gourevitch, a US political scientist whose critical approach has attracted considerable attention in the European debate¹³. In what he himself defines as a “radical” approach broadly grounded in labour republican theo-

¹² A. Gourevitch, *The Right to Strike: A Radical View*, in *American Political Science Review*, 2018, 4, p. 905.

¹³ See the special issue of the *Comparative Labour Law & Policy Journal* edited by Tonia Novitz, Katherine Fitzpatrick, and Jeffrey Vogt, entirely dedicated to the Right to strike (Vo. 45, n. 2, Summer 2025); other references to Gourevitch's work in A. Bogg and C. Estlund, *The Right to Strike and Contestatory Citizenship*, in H. Collins, G. Lester, and V. Mantouvalou (eds.), *Philosophical Foundations of Labour Law*, Oxford University Press, 2018.

ries, this author argues that reconstructing the right to strike requires a prior understanding of the real nature of the employment relationship: as he eloquently writes, «So long as we view the labor market as a series of voluntary agreements to which workers and employers freely consent, we cannot make adequate sense of the right to strike»¹⁴.

More than the workers' quest for improved contractual conditions, therefore, it is subjection to power in employment relations¹⁵ that ground the right to strike as a political right that individuals invoke to resist unjust domination. To put it again in Gourevitch's compelling terms, strike is always «a political right, even when most strikes do not have explicitly political ends»¹⁶. It follows that precisely to the extent that it is a political right, many of the restrictions that stem from its characterization as an economic right – such as the obligation not to disrupt contractual arrangements or interfere with private property through practices like picketing or sit-ins – should be reconsidered and removed; and similarly restrictions based on the aims of the strike and on the primary or secondary nature of the collective action.

(b) Moving on to the second perspective, which I previously referred to as the “external” viewpoint, the debate shifts towards framing the right to strike as a right that impacts the public sphere, rather than being confined to the private employment relationship.

While rejecting the purely economic nature of the right to strike, these positions do not necessarily or entirely embrace the same “radical” view of the above mentioned “internal” perspective on power dynamics within employment relationships. Instead, their focus is on the external or public sphere, where the right to strike serves as an instrument of industrial democracy, economic democracy, or political democracy *tout court*, as Angela Cornell and Ruth Dukes eloquently illustrate in one of the essays that has been distributed among the participants of the ECOLL seminar¹⁷, where the political nature of the right to strike is indicated as a crucial factor that should also inform decisions regarding the limitations still imposed on it in many legal systems (typically, but not exclusively, in the United States).

Finally, as a deliberately incomplete conclusion intended simply as a potential prompt for further reflection on the future of social conflict, one might

¹⁴ A. Gourevitch, *Quitting Work but Not the Job: Liberty and the Right to Strike*, in *Perspectives on Politics*, 2016, 2, p. 307.

¹⁵ See on this V. De Stefano and N. Contouris, ‘Lifting the Private-Law Veil’: *Employer Authority and the “Contractual-Coating” of Worker Subordination*, in *Comparative Labour Law & Policy Journal*, 2024, 44, 3, p. 274.

¹⁶ A. Gourevitch, *Quitting Work but Not the Job*, cit. at p. 308.

¹⁷ A. Cornell and R. Dukes, *Strikes and the Struggle for Democracy*, in *Comparative Labour Law & Policy Journal*, 2025, 45, 2, p. 288.

undertake a deeper analysis of the role and function of strikes in contemporary societies, bearing in mind that current power dynamics in the social and economic sphere increasingly transcend the traditional workplace and may even extend beyond the very notion of work itself. This evolving landscape poses a challenge to rethink the strategies and significance of collective action in addressing modern inequalities and injustices.

Briefly stated: when discussing social conflict, it is conventionally taken for granted and traditionally accepted that unions and strikes are, by definition, the key actors and instruments for giving workers a voice and promoting change aimed at achieving social justice. And indeed, this is precisely what the above have been focusing on. But can we truly be certain that, in an increasingly “technofeudalist” society¹⁸ - one in which a growing share of profits is generated through rents extracted from users of digital services, while payroll costs represent a declining percentage of big tech capital - work and workers still hold the same significance in producing corporate profits? Are we not, as daily users of digital services of all kinds, the true unpaid workforce and primary source of revenue for global big tech players? And if this is the case, or soon will be, will strikes as we traditionally understand them, continue to matter as the only effective instruments for social conflict aimed at achieving a fair redistribution of wealth? Or perhaps the traditional legal questions - what is a “strike”, who is a “worker”, who is the “employer”, and what counts as a “legitimate objective” - will soon need to be adapted to new forms of social conflict, such as consumer campaigns, digital mobilizations, boycotts, and other hybrid forms of collective action and protest that sit at the boundaries of what we are used to discussing when it comes to strikes?

4. The “Salina papers”

Although the constraints of a three-day seminar precluded a comprehensive discussion of all the issues touched upon above, the papers presented at the ECOLL seminar – collected in the following pages of OPEN – offer a diverse array of perspectives on the right to strike, fostering a profound reflection on its current state and evolution. Each contribution approaches the theme from a distinct angle, providing fresh insights into the traditional legal analysis of the right to collective action.

Julia Lòpez Lòpez situates the right to strike within the context of Spain’s transition to democracy to emphasise how collective rights may remain trapped in authoritarian conceptions of labour relations that persist even af-

¹⁸ Y. Varoufakis, *Technofeudalism: What Killed Capitalism*, Melville House Publishing.

ter their constitutional recognition.

Andrea Iossa's essay then uses one of the perennially fascinating "Nordic" models of industrial relations – namely, Sweden – as a test case to demonstrate the validity of power resources theories elaborated in the 1970s and 1980s as an analytical tool for explaining the role of conflict in shaping developments in collective labour relations.

The two final essays investigate the role of supranational rules in qualifying the right to strike as a fundamental right, with all that it (should) implies in terms of scope of protection.

Elisabeth Brameshuber focuses on Art. 11 of the European Convention on Human Rights (ECHR) to conclude that its judicial interpretation has not proved capable of providing a common frame of reference for understanding functions and limits of the right to strike in national contexts, where on the contrary full effectiveness of that right remains largely dependent on the characteristics of the domestic industrial relations systems, as a comparative analysis of different European legal systems might demonstrate.

Finally, Tonia Novitz assesses the actual capacity of the ILO and other regional mechanisms of international law to "preserve and enhance" the protection of freedom of association and the right to strike in global labour markets, also offering an "insider's perspective" on the highly sensitive case currently pending before the International Court of Justice concerning whether the right to strike falls within the scope of ILO Convention No. 87¹⁹.

¹⁹ The ECOLL 2025 panel was completed by Prof. Benjamin Sachs (Harvard University), who presented a paper on the US debate regarding the Federal/State alternative in the regulation of collective labour rights.