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Work, Work, and More Work: Whose Economic Rights?

Stanley Aronowitz
CUNY Graduate Center

Shirley Lang
CUNY School of Law

Ruthann Robson
CUNY School of Law

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WORK, WORK, AND MORE WORK: WHOSE ECONOMIC RIGHTS?

*A Conversation Between Professors Stanley Aronowitz†
& Shirley Lung††
Moderated by Professor Ruthann Robson†††*

PROFESSOR RUTHANN ROBSON: Today we have a special treat. This talk is the fourth annual conversation that we've done in LEDP,¹ in which we match one of CUNY's Distinguished Professors with one of our own distinguished professors to talk interdisciplinarily about things that we thought about in terms of constitutional rights. The first one that we did featured Frances Fox Piven with Stephen Loffredo,² and they talked about class and thinking about poor people and poor people's rights. The second one that we did was about healthcare and healthcare as a right—and obviously we were doing that one as healthcare reform was happening—and that was be-

† Distinguished Professor of Sociology in the Ph.D. Program in Sociology at the CUNY Graduate Center and Director of the Center for the Study of Culture, Technology, and Work. Professor Aronowitz does research on the sociology of education, the sociology of labor, social theory, and science and technology. He is the author of *The Knowledge Factory* (2000), *From the Ashes of the Old: American Labor and America's Future* (1998), *Postmodern Education* (1991) and *Education Under Siege* (1985), both written with Henry Giroux, and the classic *False Promises: The Shaping of American Working Class Consciousness* (1973), as well as the author, co-author, or editor of several other volumes and over one hundred published articles for scholars and the general public. His latest book is *Taking It Big: C. Wright Mills and the Making of Political Intellectuals*. His current research interests include the role of new information technologies in schools and other workplaces and the development of critical curriculum.

†† Shirley Lung, Professor of Law, CUNY School of Law. Before coming to CUNY, Professor Lung was Executive Director of the Center for Immigrants' Rights. She has a long history of working on labor issues affecting Chinese garment, restaurant, service, and construction workers in New York City through participation in several independent workers' centers. Professor Lung has helped to develop position papers on the employer sanctions provisions of the Immigration Reform and Control Act of 1986 and its role in dividing working class workers against one another. Her scholarship includes the articles *Overwork and Overtime* and *Exploiting the Joint Employer Doctrine: Providing a Break for Sweatshop Garment Workers*, as well as articles on academic support and law school pedagogy. Professor Lung has been frequently recognized by graduating classes of CUNY for excellence in teaching and community service.

††† Professor of Law and University Distinguished Professor, CUNY School of Law. She teaches in the areas of constitutional law and sexuality and the law.

¹ Liberty, Equality, and Due Process is a required first-year course at CUNY Law examining issues of race, gender equality, and sexual orientation in the context of constitutional and historical analysis.

² See Stephen Loffredo & Frances Fox Piven, *A Discussion of Poverty, Class, and Economic Justice Between Frances Fox Piven and Stephen Loffredo*, 11 N.Y. CITY L. REV. 1 (2007).

tween Nicholas Freudenberg of the School of Public Health at Hunter College and our Law School's Janet Calvo.³ The third one we did focused on language and language rights, for which we had a poet, Kimiko Hahn, who is a Distinguished Professor at Queens College and the Graduate Center, and Judge Jenny Rivera.⁴ Today we are going to talk about employment, work, jobs, jobs, jobs, work, work, work—I feel like I'm on the campaign trail. And we have two terrific professors who have been longtime activists, who have thought about work, and worked on work, and who give us their thoughts.

Stanley Aronowitz is the Distinguished Professor of Sociology at the Graduate Center and Director of the Center for the Study of Culture, Technology, and Work at CUNY. He's the author of more than twenty-five books, so I'm not going to say all of them, but his most recent is available online and in your favorite independent bookstore. Some of my favorites are *The Last Good Job in America* and *How Class Works*.⁵ Again, he's well-known not only for his scholarship but also for his activism on a broad range of economic justice and employment and labor issues, including rights, workers' rights, and also the link between jobs and education, which we'll talk a little about.

Shirley Lung, who many of you know, is a Professor of Law here at the Law School, where she teaches classes such as The Rights of Low-Wage Workers, and is also a professor in the Academic Support program. She talks about the relationship between work and education, including one of my favorite articles by her, which is about overwork—how you tell when you're working too hard, too much, too long; and also looking at immigrants' rights and undocumented workers and how to hold employers, especially in sweatshops, responsible. She also has a long history of organizing low-wage workers with the Asian-American Legal Defense Fund and the Chinese Staff and Workers' Association. So let's welcome our speakers.

I thought we'd start off by thinking about some of the things we've talked about in Liberty, Equality, and Due Process. We've also been considering the constitutional status of a right to work, and interestingly, but perhaps not surprisingly, often that right to

³ See Janet Calvo & Nicholas Freudenberg, *A Conversation on Health and Law with Janet Calvo and Dr. Nicholas Freudenberg*, 12 N.Y. CITY L. REV. 63 (2008).

⁴ See Kimiko Hahn & Jenny Rivera, *Translating Equality: Language, Law, and Poetry—A Conversation with Kimiko Kahn and Jenny Rivera*, 13 N.Y. CITY L. REV. 233 (2010).

⁵ STANLEY ARONOWITZ, *THE LAST GOOD JOB IN AMERICA* (1997); STANLEY ARONOWITZ, *HOW CLASS WORKS: POWER AND SOCIAL MOVEMENT* (2005).

work really has been used by employers to force people to work for as long of hours as possible, and usually for as low a wage as possible. So the first thing I wanted to open up with is, is that really the way it has to be? Or can we conceptualize and maybe even actualize a right to work that is about worker autonomy? So we'll start with you, Stanley. Yes or no?

PROFESSOR STANLEY ARONOWITZ: In the United States the only way in which workers have been able to gather any kind of right—the right to work for a limited number of hours, to have some control over their working conditions, and be able to limit the hours they have to work—has been through two institutions. The most important, historically, was the labor movement. I say that was the most important because even before we had a National Labor Relations Act,⁶ which was enacted in 1935, but really didn't come into effect until 1938 as the result of a Supreme Court decision sometimes called the *Chicken Pluckers' Decision*, where a chicken plucker company challenged the constitutionality of the National Industrial Recovery Act.⁷ But it was really before that that the unions, through one major activity that they conducted, were able to gather some rights, and that activity is the strike. The right to strike—the right, therefore, to withhold one's labor—was in some sense the only guarantee that workers had through which they were able to control their own conditions, or what is called, technically, the *terms and conditions* of work.⁸ The National Labor Relations Act was established—in my opinion, and I'm writing about this even as we speak—in order to control what in 1933 and '34 had become the strike wave. The control of the strike wave was in the form of a law that provided a series of procedures as well as the rights to organize unions; workers could organize unions of their own choosing. That had not been the case in advance, because the companies, companies like DuPont, famously, and some others, actually established company unions, which in many ways were not unions at all, they were really very loose grievance mills which the company said replaced independent unions.

⁶ National Labor Relations Act (NLRA), Pub. L. No. 74-198, 49 Stat. 449 (1935) (*codified as amended at* 29 U.S.C. §§ 151–169 (2012)).

⁷ *A.L.A. Schechter Poultry Corporation v. U.S.*, 295 U.S. 495, 537 (1935) (holding that Section 3 of the National Industry Recovery Act was an unconstitutional exercise of legislative power by Congress. Section 3 authorized the President to approve “codes of fair competition,” such as the “Live Poultry Code,” which regulated hours and other labor conditions in the poultry industry.).

⁸ NLRA §§ 7–8, 29 U.S.C. §§ 157–158.

To this day, November 16, 2012, companies still argue as they did in the 1920s and 1930s that you don't want a union because what you're doing is bringing in an outside force to the relationship which employers and workers have between them. There is, therefore, even to this day no constitutional right to work, or no constitutional right to withhold one's own labor. A friend of mine who is a Professor of Law at Rutgers Law School, whose name is Jim Pope, has argued that the right to withhold one's labor should be a constitutional right.⁹ He says the most important problem is a First Amendment right, it's a right to free speech, to say "I don't want to work here until I get terms and conditions that meet my needs." He says that, unfortunately, the courts don't agree.

PROFESSOR SHIRLEY LUNG: What I also think is interesting is that the period that you're talking about, with the National Labor Relations Act, the Wagner Act of 1935, that the right to strike, or the right to engage in concerted activity through mutual aid and support, is grounded in protecting, some people argue, commerce. Based on the idea that the right to strike, the wave of strikes you were referring to in the 1933–1934 period—wildcat strikes, intermittent strikes, spontaneous strikes—that those had the great threat of basically stopping commerce. And so part of the idea behind the National Labor Relations Act was the need to ensure the right to engage in collective bargaining, to basically protect commerce from being disrupted.¹⁰ And so it's very contradictory in terms of the history and what animated the National Labor Relations Act, because on the one hand it did enshrine the right to engage in collective bargaining, the right to organize, to join unions. And at the same time that right is subordinated to protect commerce. So all of the line of cases we see interpreting the National Labor Rela-

⁹ See Jim Pope, *Next Wave Organizing and the Shift to a New Paradigm of Labor Law*, 50 N.Y.L. SCH. L. REV. 515, 554 (2006); James Gray Pope, *The First Amendment, the Thirteenth Amendment, and the Right to Organize in the Twenty-First Century*, 51 RUTGERS L. REV. 941, 949 (1999).

¹⁰ See 29 U.S.C. § 151 ("The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.").

tions Act and the agency interpretations and board interpretations of the National Labor Relations Act have really, to this point in time, begun to constrain the right to strike, to regulate that right to strike. And now what we see more of, we see greater incidences because of the intrusions on the right to strike. I think that has played out both culturally—popularly—but also legally. Basically it is thus less possible to strike. And that we see now—more lockouts by employers . . .

PROFESSOR ARONOWITZ: Especially in the sports industry.

PROFESSOR LUNG: In the sports industry. And we see it in instances in local communities. In Chinatown we've seen lockouts being used by restaurant owners to say, "We're just going to lock you out." [It becomes] a very protracted struggle. It's very interesting to me that the right to strike is so fundamental, but it's grounded in commerce.

It's interesting to me when you talked about the Thirteenth Amendment. Some people have said at one point the Thirteenth Amendment wasn't only about ending chattel slavery—that there were strands of the debate on the Thirteenth Amendment that really talked about freedom of labor, the autonomy of laborers to control, to not be subjugated, to be free from starvation wages, to be free from oppressive, brutal working conditions. So there is this whole history of the Thirteenth Amendment that's unrealized. And is it merely an academic exercise to think about if there is a way that we use the Thirteenth Amendment to reform or change the way we think about employment relations, relations between workers and employers? Or is there real value towards doing that in terms of promoting, advancing workers' rights today? Wherever those struggles take place—whether it is the rhetorical struggle, where it's the struggle in terms of the fight for what the narrative is when we have workers' struggles at stake, or whether it's in the legal arena in the cases—is there some interest to see . . . how we could use the Thirteenth Amendment to ground a fundamental right to strike. Because we need a fundamental right to be free, to be, to have autonomy, labor autonomy. Is that something that's useful to do?

PROFESSOR ARONOWITZ: Sure it's useful to do it. And one of the things that we ought to make clear is that we are in the State of New York, which has a public employee union movement of about half a million people at the city, state, and federal level. In the

State of New York and at the federal level generally, public employees do not have the right to strike. The Taylor Law¹¹ and federal law,¹² which is a separate law, prohibits public employees from striking. And that was a deal between the unions that were organizing among the public employees and the government. The government said, “We will recognize the unions for the purposes of collective bargaining in return for which you have to give up the right to strike,” and the unions agreed to that. I will say “agreed to that” egregiously, and now the unions are suffering because policy both at the State and New York City level is zero salary increases for public employees, and collective bargaining has been reduced to public begging. If you don’t have the right to strike you’re always in some situation of collective begging, because you can demonstrate in front of the state office building or the city hall or wherever, but basically you don’t have the right.

Now, that brings up the question that you raised: *Would it be important to interpret the Thirteenth Amendment to include the right of workers to strike and the right of workers to control the conditions of their own employment?* And the answer is obviously yes. I don’t think that it would be a bad thing at all. However, I have a prejudice, because I was in the labor movement for a long time. *Labor movement* meaning I was a steelworker for about eight years; I was a union organizer for another seven years; I spent fifteen years active in the labor movement, and I still am; I was on the Collective Bargaining Committee and the Executive Council of our own union, the Professional Staff Congress. My observation, both in my scholarship and in my own experience, is the only way you actually change the law is by acting. But if you act, then the question becomes, *What will you take as a settlement of your striking, or a settlement of your engaging in concerted activity?* And the answer for the unions could be, “Well, we need a constitutional amendment.” That takes a lot of states to say that’s the case, if it’s going to be an amendment, or an amendment to the amendment, and I’m not sure that we’re in a political situation where that’s possible.

However, the problem both of the unions and of advocates for workers is that we have a problem of a lack of intellectual curiosity and intellectual aggressiveness. If we look at the history of labor relations, the rights of workers as a legal proposition, as well as an actual proposition, predated the strength of the unions by a cen-

¹¹ See Public Employees’ Fair Employment Act of 1967, *codified at* N.Y. CIV. SERV. LAW §§ 200–14 (McKinney, Westlaw through L. 2014, chs. 1 to 19, 50 to 58, 60).

¹² See Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111.

ture at least. In the 1830s and 1840s, there were people who were talking about labor rights when there was no possibility for labor rights to be effective. We don't have that conversation now, and I'm glad that you brought it up, because it seems to me that we have to start the conversation. Maybe not in our lifetime, but if we start creating a culture, an environment in which conversations about the constitutional rights of workers to control their own labor are raised—Pope thinks it's a First Amendment right—then we might find that at some point it's going to happen. If we don't even raise the question, it never will happen.

PROFESSOR LUNG: I agree with that, though I wasn't even thinking necessarily of the Thirteenth Amendment as a legal strategy—although it could be, and I could see it playing out. I also think, in terms of how we are acculturated, how we're socialized to think about workers' rights, that it's important for us to begin to think about these rights as constitutional rights, that they're fundamental rights, as opposed to just statutory or legal rights. In terms of what we want as workers, what we fight for, they're not just legal rights, so in terms of thinking about what led to the kinds of regulations that we have that protect the right to organize, like the National Labor Relations Act¹³ or even the Fair Labor Standards Act,¹⁴ we tend to think about it as a result of the New Deal. For a lot of people that's the extent of it. It was legislative reform that was part of the New Deal. But there was also this whole vibrant, radical, militant labor movement that created the pressure for government to respond.

I was just reading and thinking about the Auto-Lite strike in Toledo, Ohio of 1934, and at the time, there was the National Industrial Recovery Act.¹⁵ Section 7 basically protected the right to engage in collective bargaining, but it wasn't being enforced. When the workers were going out to strike, there was an anti-strike injunction levied against them. However, the workers still went on strike, and they were held in contempt of court, they went to jail, and the movement grew and became very bloodied and violent. The workers weren't going to let the use of law take away their right to strike, and they didn't see that their right was granted to

¹³ NLRA § 7, 29 U.S.C. § 157 (2012).

¹⁴ Fair Labor Standards Act of 1938, Pub. L. No. 75-718, 52 Stat. 1060 (1938) (codified at 29 U.S.C. § 201 (2014)).

¹⁵ National Industrial Recovery Act of June 16, 1933, Pub. L. No. 67, ch. 90, 48 Stat. 195 (1933) (codified at 15 U.S.C.A. § 703). This Act was held unconstitutional in *A.L.A. Schechter Poultry Corporation v. U.S.*, 295 U.S. 495, 537 (1935).

them by section 7-a of the NIRA, it was a right that was fundamental to them—being able to fight against what was happening at the Auto-Lite plant.

PROFESSOR ARONOWITZ: In 1934, the Toledo strike was only one of four major strikes that year. There was a general strike in San Francisco, and a general strike in Minneapolis, but they were connected to the transportation industry: Longshoremen in San Francisco and Teamsters in Minneapolis. The fourth strike, which is not as well known, was a national textile strike of 400,000 workers; primarily women in the South of the United States went on strike. They were sold down the river by their union leadership who made a deal with Franklin Delano Roosevelt to say, “If you will stop the strike, I will help you negotiate a contract with textile employers.” And then Roosevelt walked the other direction and sold them down the river again. Now the problem obviously is that there was, as you say, radical activity, there was striking—there had also been a miners strike and a garment workers strike in 1933—and Roosevelt felt the political pressure. If he had not signed the National Labor Relations Act—and it wasn’t even him that did it, it was Senator Wagner of New York—the ‘36 election might have looked different. There was a possibility unions would form a new party if something serious wasn’t done about labor rights. Roosevelt did not want the new party to be formed; he wanted them to stay behind the Democratic Party, which of course is, I think, a tragedy. But nevertheless, for the next thirty, thirty-five years, there were real benefits that were gained by unionized workers, as well as non-union workers, from the New Deal and its aftereffects.

That stopped after the Medicare Act of 1966 and the Civil Rights and Voting Rights Acts of 1964¹⁶ and 1965.¹⁷ We haven’t had anything new in forty-five years in terms of reform. So there’s a certain issue as to why the union movement put \$400 million behind the reelection of Democratic President Obama. That’s an interesting question we can discuss in due time, but I do think that you have a social movement, and then you have change. It doesn’t come about because a bunch of smart politicians and sympathetic politicians decide to make change. It doesn’t happen that way.

PROFESSOR ROBSON: We’ve talked some about the right to quit as a

¹⁶ Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241.

¹⁷ Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437.

Thirteenth Amendment right, so what's the difference, really, between the right to quit and the right to strike?

PROFESSOR LUNG: I think the right to quit comes up when we think about compulsory labor. So the right to quit, the right to mobility, to me is also about freedom. Why was the right to quit historically an important right? Because after the end of slavery there were all of these Black Codes that were enacted that were trying to recapture an enslaved labor force.¹⁸ They had anti-enticement statutes directed at employers that said you basically couldn't poach the employees of another employer, because they were trying to create a captive workforce after the abolition of slavery. You could also be prosecuted and criminalized for being a vagrant if you didn't have a job and you refused to work at a certain wage when someone came up to you and asked if you would work for them for a certain amount. So the idea that there was a whole system that was criminalizing non-work as a way to capture and retain a captive labor force becomes important when the issue of a right to quit comes up. To me the idea of a right to strike is a different right because we're not talking about quitting or leaving, we're talking about striking to affect the terms and conditions by which we work and live. But I don't belittle the right to quit, because when we talk about compulsory labor, the right to quit is an important, meaningful right, because it has to do with the idea that you're not free.

PROFESSOR ARONOWITZ: One of the problems about the right to quit is that under certain circumstances people do have the right, but under conditions such as we have now, where there are millions of people looking for jobs, although the formal right to quit may exist, if you don't have jobs outside of the job you have, the right to quit becomes kind of empty. While he was President, Richard Nixon made a proposal for a guaranteed income, and we need the security of a guaranteed income for people to substantively have the right to quit. We have a case where in the year of our Lord 1996, the President of the United States, William Jefferson Clinton, signed a so-called Welfare Reform Act,¹⁹ which eliminated the only guaranteed income program we had. We don't have a guaranteed

¹⁸ See, e.g., *Slaughter-House Cases*, 83 U.S. 36, 70 (1872) (describing state laws enacted after the abolition of slavery and finding that the laws saddled African Americans with "onerous disabilities and burdens and curtailed their rights in the pursuit of life, liberty and property to such an extent that their freedom was of little value.").

¹⁹ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

income program anymore, or what exists is very threadbare, so to decide to quit and condemn yourself to the existence of welfare is a very risky business. The other problem that we still have, even though it used to be much more widespread, is that we still have many towns, many cities in the United States, which have one industry in the town. The whole textile industry is organized in that respect. Even in Upstate New York, in the city of Schenectady, there was one major employer, General Electric. Lynn, Massachusetts, also, General Electric. If you quit General Electric, you better leave town, if you want to make the kind of decent income that General Electric under union conditions offered. So this is a big problem. The right to quit, the coercion that exists because of the economic situation, brings the question of rights into direct relationship to the economic situation that people face when they exercise that right.

PROFESSOR LUNG: I also think about the right to quit in terms of the issue of immigration and undocumented workers. There are employer sanction provisions of the Immigration Reform and Control Act of 1986,²⁰ which basically say it's unlawful for an employer to knowingly hire someone who is without authorization to work in the United States. It doesn't make it criminal for the worker to work, but it does make it a violation for the employer to knowingly hire someone. In some ways, when you talk to people about this provision, it goes against your intuition because you're saying, "well it sanctions employers who are basically using undocumented workers to depress wages and to exploit workers; so it's a good thing because it sanctions the employer." However, the last twenty years have shown that that's not true, that very few employers are prosecuted or fined, and most of the enforcement is really on the backs of undocumented immigrant workers. The impact of it is basically, again, to create a captive workforce, because if someone thinks it's a really hard job, they might not quit this job because it might be difficult to get another job, because they don't have work authorization, and the employers know that. So there is a lot of exploitation that goes on, because you're not as free to move, to find a job, because of the whole issue of authorization to work.

And so then the question is, "Well, that's just an immigration problem, isn't it? That's just something that affects undocumented immigrant workers, isn't it?" But the relationship between immi-

²⁰ See 8 U.S.C. § 1324a (2012) (providing a range of civil and criminal penalties for employers who employ undocumented immigrants).

grant workers, undocumented immigrant workers and workers who are native-born is very integrally tied. If someone is undocumented, it is very difficult for them to refuse longer hours, lower wages. And if you're working alongside someone who's a citizen worker or has papers to work, it's very hard for that person to say to the employer, "Well, I'm not going to work those long hours unless you pay me overtime, or I'm not going to work under these conditions." It's very hard to do that because the employer will say, "Fine, leave, because there are many more undocumented workers I could hire." So this question of right to quit is being played out because of the lack of jobs and structural lack of rights that workers have. And instead of being played against each other, actually there is a common unity here, because the interests are very tied together. However, it's very easy to divide these workers against each other, if you talk about immigration only as a matter of rights for immigrants, but not about the issue of labor as a right that affects not just immigrants. Immigration isn't just affecting immigrants; it's affecting workers as a whole class. I think that's one of the challenges that we have in terms of the direction of the labor movement—how we really begin to overcome those built-in divisions between immigrant workers, undocumented workers, and citizen native workers. And also particularly between groups pitted against each other: immigrant workers, African-American workers, and white working-class workers.

PROFESSOR ARONOWITZ: It's very interesting that you should mention that, because in the '60s and the '70s, there was a movement that was very successful over the '70s and the early '80s called the United Farm Workers. Agricultural workers have been notoriously exploited as well as unorganized into unions, and the National Farm Workers Union successfully organized both through boycotts and strikes. There was a big grape boycott, and there were major strikes, mainly out of California, but not exclusively out of California. Many of those immigrant workers were undocumented, and many of them were documented, and they got organized. One of the things that the strike did was that it began to raise the awareness by the organized unions of the importance of organizing among the working poor on the one hand, and among immigrants on the other. That effort has met a tragic end. However, the labor movement is always full of ebbs and flows, and I believe that in New York City right now, the labor movement is becoming much more aware of the plight of immigrant workers. And largely not because they have had an epiphany, but because there were at least two

organizations, the Taxi Workers Alliance and the organization of domestic workers, who have brought their problems and their militancy to the table of the labor movement. And they are being incorporated into the Central Labor Council. That's happening in California as well.

So it was really from the bottom that the unions became much more aware, because otherwise they were happy to live in the shadow of this split labor movement, this split labor force. But when confronted, they had a very difficult time avoiding, recognizing, the Taxi Workers Alliance—now, for example, as a member of the Central Labor Council, 8,000 people.

I wanted to just mention one more thing, and I think it's rather important. It was a couple weeks ago. I don't know whether everybody knew this, but Walmart is the largest employer in the United States. In the city of Chicago, a couple of weeks ago at one of the distribution centers, there was an unauthorized strike of Walmart distribution workers. One of the major characteristics of that strike is that, unlike most strikes and most organizing efforts, they were not looking for a contract. They were looking to settle some of their grievances. It was what I call an IWW (Industrial Workers of the World) strike, which was a strike of industrial workers who were not seeking a contract with employers; they were seeking remediation for their grievances. When they went back to work and threatened to strike again, they didn't get the remediation of their grievances, but they were all hired back by the employer, who was a little bit afraid to let them go. So we are at a new period in the history of the labor movement; it's going to be a very interesting period. I think contracts are basically of the past. I think a lot of the activity by unions and a lot of activity by workers will not be to gain collective bargaining in the traditional sense. They are going to be to gain justice. And if they gain justice, they may or may not have a contract. I think that's a new direction, and I think it's an important one.

PROFESSOR LUNG: And I think it's important for us, who are lawyers and lawyers in training, to think about this development, because some of the organizing—or at least the organizing of the United Farm Workers—took place totally outside of the National Labor Relations Act. So the question of whether you have a legal right or not is in some ways irrelevant, if you claim that right. If you're claiming power and you fight for it, then you create rights outside the whole apparatus of law. The United Farm Workers—they were

an inspiration in terms of what they were able to achieve. And it was a tactical protracted struggle, and it was totally outside of any legal framework because the legal framework excluded them.

We have a lot of categories of workers—still the domestic workers are excluded from protection of the National Labor Relations Act.²¹ We can go on; there are many. So the idea that if people rest their idea of rights and what they can do in their lives based on what the law gives to them, that's very limited. And what you've already seen in the cases that you've read is that access to courts has narrowed, and that even when you get into court, the interpretation of what rights we have has been narrowed by the courts, by the National Labor Relations Board. And if workers were to stop organizing, their rights would continue to narrow.

That's what I see happening in terms of when we talk about undocumented workers, and I think it's really important because there is a challenge to labor, there's a challenge to organized labor because organized labor supported the employer sanctions provisions on the idea that immigrants steal jobs from native-born workers and so we need to provide disincentives for hiring immigrant workers.

It [organized labor] since has reformed and reversed its position in 1999. But no organized labor union has taken—made it an important political stance—to basically repeal the employer sanction provisions of the Immigration Reform and Control Act.²² And I don't only fault the labor unions; I fault the immigrants' rights activists as well because what we're looking for in comprehensive immigration reform is basically a path to legalization, which is important because that will affect people's lives. But if we keep intact the structure of employer sanctions, we're always going to have a two-tiered system of workers: those who are perceived as criminals and whom society wants to criminalize, and everybody else. Whenever you have that structure in place, it doesn't matter how many undocumented immigrants are given a path to legalization; the structure of the workforce dividing immigrant versus non-immigrant, citizen versus non-citizen, is there. And that is a huge divide. That is a huge, structural power that employers have at the workplace.

²¹ NLRA § 2, 29 U.S.C. § 152(3) (providing that an "employee" covered by the Act "shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home").

²² See 8 U.S.C. § 1324a (providing civil and criminal penalties for employing undocumented immigrants).

PROFESSOR ARONOWITZ: I would just add one more thing because I think it crosscuts the immigrant rights issue. The organized labor movement, with some exceptions, but only very few, has consistently refused, or failed—I would not use the word *refused* necessarily, but at least failed—to organize the working poor, to organize contingent labor, which is a growing part of our workforce.

PROFESSOR LUNG: To organize unemployed workers.

PROFESSOR ARONOWITZ: Well, to organize the unemployed. With all due respect to the labor movement, we have not seen the organization of the unemployed, and let's put our cards on the table: the major march of the unemployed in the 1930s took place in the Year of our Lord 1930. And the 1930 march involved a million unemployed workers and was led by the Communist Party. We should understand that. Then the Socialist Party got involved and they formed a workers' alliance in the mid-1930s. We haven't had anything since the mid-'30s in the way of an organized unemployed movement.

But the labor movement regards only—and this is the narrowing—the labor movement sees itself these days—and I hate to use the word labor movement because they're not a movement, they're a bunch of unions—the unions have not been willing to consider the rights and the fate of workers who are not their members, especially not their dues-paying members. So the working poor and the part-time people and the contingent people are de facto excluded from organized labor, by and large.

Secondly, they [the unions] have not been willing to organize the unemployed and do not see that as part of their mission. We now have a situation in which unions are being run by accountants. With all due respect to accountants, they are saying, "We can't afford to organize people who can't pay decent dues." That's not a good argument. It's a self-defeating argument.

So I suspect that what's going to happen, and what is already beginning to happen, is that—as you said correctly, I think—the organization of the working poor, the part-timers, and the contingent labor is going to take place to a large extent outside of the framework of the existing organized unions. It's going to take place because community organizations and workers' organizations begin to take the initiative and begin to take on the issues that are involved, including the immigration issue.

You're right. If the immigrant rights movement does not take

on the organization of immigrants, it's not going to happen as part of the labor movement because the labor union is very narrowly facing.

PROFESSOR LUNG: I want to go back to *Lochner*.²³ I know that recently you read *Lochner*. And it's important for a lot of reasons, right? So how do you look at *Lochner*? There's so many ways to think about *Lochner* and its impact on us. Is it an instance of assertion of federal judicial activism over state legislation? Do we look at it that way because it could be, right? That's one thing that it looks like. Do we look at it as a workers' rights case? Because, after all, the case struck down a New York statute that was basically limiting long hours for people who worked in bakeries. So do we just look at it as a workers' rights case by being an anti-workers' rights case, or do we look at it as an employers' rights case? That's one way to look at it, right? Or do we look at it as something bigger? Many of the cases that were based on the *Lochner* ideology were subsequently overruled by U.S. Supreme Court cases.²⁴ But that *Lochner* anthology lives, right? We saw it play out; we see it play out every day when we pick up the newspaper; we see it play out in the politics of this country; we saw it play out in the election.

So what was in *Lochner* that I say still lives so much—not just in law, but in culture, in our legal system, in our social system, in our political system . . . what's so infuriating, dangerous, and vicious about *Lochner* was not just that they struck down the statute, but that basically they're saying that the health and the interest of bakers was not in the interest of the public good, right? The interest of bakers and the interests of workers is a special interest group. That's special interest legislation, that's a partisan interest, and the interest of workers is no different than any other constituent group. To me the part about *Lochner* that is most dangerous and that lives is the idea that workers' interests are spliced off from what's considered to be the public good.

Then it's very easy, as we are seeing, to blame public employees for the ill of the economy because of their pension plans. Workers who are striking are hurting commerce and are hurting the community. We basically see workers' interests as antithetical to the public good, workers' interests as antithetical to the commu-

²³ *Lochner v. New York*, 198 U.S. 45 (1905).

²⁴ See, e.g., *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 400 (1937) (overruling *Adkins v. Children's Hospital*, 261 U.S. 525, 43 (1923), which had invalidated minimum wage legislation for women and children in the District of Columbia).

nity. But employers' interests are synonymous with the public good. What's good for commerce, what's good for business, a better business climate, is going to be good for workers. It seems to me that is at the heart of the struggle; that is why people are mad at public employees. You have pensions, right? Or people are mad at striking workers. "Why are you striking for that? You're striking for an increase in wages? Well, I haven't had an increase in wages in a long time and I don't have a pension."

And so it's this idea that whenever a group of workers is standing up to fight for what they are due and to fight for the right to dignity—because it goes beyond the issue of wages; it's about dignity at the workplace—that's seen as being against the community; it's seen as being selfish; it's seen as being a threat to commerce. It seems to me that is what we need to battle, and that battle is a difficult battle to undertake. That battle requires . . . changing how we think of each other, how we think of different classes of workers, including undocumented workers. But how do professional workers think of blue-collar workers? How do blue-collar workers think of "skilled workers"? All these divisions are so stitched into the fabric of law, of culture, of policy, of society, of how we are socialized, that we don't even really think about it critically. So that's why this is so wonderful that Professor Robson brought us together to talk about this because the question you ask is, what is work? Who do we consider as workers? Who do we consider as employees? What's work? What's non-work? What do we value as work? But all of that, it seems to me, is what we—progressives, lawyers, whoever we are—should engage in to be able to see what common interests we have. Because if we don't do that, why should I support immigrants' rights if I'm not undocumented and if I'm not an immigrant? Why should I? Then it's just an immigrants' rights issue. Or if it's an issue about wages, about that strike going on at Hostess Cupcake or whatever, why should I be interested in that in any sustained way?

PROFESSOR ARONOWITZ: One of the problems, ideological and cultural, is that if you want to have a class stand for it, but you take the position that anybody who has a job—who makes up to \$20,000 a year, which is the poverty rate—is middle class, and when you hear politicians over and over and over again, and the unions, saying "middle class this and middle class that," then you lose a certain kind of linguistic advantage.

PROFESSOR LUNG: \$7.25, the minimum wage, increased in 2007

from \$6.50 or \$6.75 over the course of two years. And in 2009 the federal minimum wage became \$7.25.²⁵ You multiply that by forty hours a week and that comes out to \$15,080. That's below the federal poverty line. And so, you're talking about single parents, single women with kids living on \$7.25—if they are paid \$7.25. But if we just talk about the minimum wage and what that would do to business it seems that there is a reality that is obscured by the language of talk.

PROFESSOR ARONOWITZ: Well, what we don't have here in the United States, and we haven't had it for a very long time, is a theoretical and political analysis of the class structure in American society. The belief, for example, which is patently absurd, that employers create jobs—which was continually repeated during the presidential campaign of 2012—is really widespread in the sense that we have to help business and help commerce because that's where the jobs come from. The truth of the matter is that jobs come when workers produce goods and services. They are the ones who are the producers, not the employers. The employers invest capital. It's a very different kind of relationship. But nobody's talking about that relationship.

In Europe at least—although they are deteriorating as well, I submit—for example, in France, the worker in an enterprise of over fifty workers has a right to collective bargaining, regardless of whether they're in a union or not. So that committees—*Ar det pleas*²⁶—are established by law to negotiate the terms of the conditions of employment. Now it doesn't mean that the union is completely passive; the union vies for the positions—there are three or four unions—they vie for the positions on those committees, the enterprise committees, and they negotiate. The government is required by law to train people on those committees to learn the labor law and to know how to negotiate.

We don't have that situation. We have continually defined—and I think your point is very well taken—we've defined workers' interests as private interest, not public interest. We have defined workers essentially as individuals, not as collectives. We have defined collective bargaining as a voluntary activity that is a result of an election, which can be intervened by the employer at will, and there are very, very, very few people who would ever understand, at the moment, that workers are public goods, that workers' activity,

²⁵ 29 U.S.C. § 206 (2014).

²⁶ French for “committees.”

not workers personally, but workers' activity really benefit the entire economy. And they benefit the entire society. That conception is foreign to American law, foreign to American ideology. We have to work to correct that.

PROFESSOR LUNG: The reason why I brought it back to *Lochner* in the law school classroom is because we also have another tradition of cases. We have *West Coast Hotel Co. v. Parrish*,²⁷ where there the Supreme Court is talking about the liberty of contract relationship, but it's talking about that there's a relationship of power inequality—that it's a class conflict, that employers can be greedy, that if we allow the employers to pay sub-minimum wages that we're giving a subsidy to employers. We're subsidizing employers, right?

Whereas the *Lochner* idea is that if we require intervention to protect workers, then we're going to require employers to basically subsidize undeserving workers. So we have some cases that basically represent a different paradigm for looking at workers' rights, but it doesn't seem to me that that set of cases is the norm. Lawyers need to make that set of cases the norm. We need to call upon those cases.

That's why I also think that what we're involved in here at CUNY Law, as far as its mission to diversify the bar and the bench, is really important in terms of who you are because the class-based assumptions and biases of judges—given who they are and the composition of the bench—those are the people who are deciding these cases that have to do with workers' rights, who are deciding the cases like *Citizens United*.²⁸ We're looking at who the judges are and the idea that we populate the law profession with people who are not just from a certain privileged class, but maybe we could come up with case law that is not fragmenting interests of workers, not redefining divisions between workers, whether it's based on citizenship status or whether it's based on class identity. Basically, maybe we would be able to have case law that tried to look at workers as being defined as part of the public good.

But I also want to go back to a point that you made earlier, Stanley, that the law is not what's propelling the social movements, right? Social movements push forward the law. It's only because of people who are organizing, pushing, using the law, organizing, pushing, using the law, that in some ways the law responds. Anything that I've seen in workers' rights that has to do with represent-

²⁷ *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 406 (1937).

²⁸ *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

ing some new legal inroad has been because it's been preceded by organizing by workers, working with lawyers—coming up with ideas, legal tools, and strategies to figure out how to articulate, express, and push to advance what the organizing struggle is about. The law, then, is forced sometimes to catch up.

PROFESSOR ARONOWITZ: It's an anonymous history. The problem is that our historians—I mean the most prominent historians, for example, of the New Deal, or for that matter of slavery—will focus on individuals, [such as] the *Lincoln*²⁹ movie that just came out. Arthur Schlesinger, Jr., who is our colleague at the Graduate Center out of CUNY for a very long time, writes a history of the New Deal—more than one—on Franklin Delano Roosevelt.³⁰ It's as if Franklin Delano Roosevelt was responsible for everything. I mean, it is unbelievable.

But the social historians, and I know some of them, they are trying to create what might be described as an anonymous history—that is, a history of people's actual struggles in which there are no single leaders who are the representatives of good and so on. And that's part of the ideological struggle: you have to begin—we have to begin to say, “Look, it's not Brandeis, it's not Oliver Wendell Holmes, it's not William O. Douglas or Hugo Black who have created all the good things in the world. It's the people.

I saw *The Grapes of Wrath*³¹ on the tube the other night. It's not a great movie, in my opinion. I liked the novel a whole lot better. But at the end, the actor Jane Darwell, who plays the mother, says, “We just keep coming. We're the people.” The people keep coming. And what historians have forgotten—the Doris Kearns and the Schlesingers and so on—is that it's the people, not the figures who are professional politicians, who are making the difference.

One of the things that happened in New York State, which I'm very happy about, is . . . I know lawyers who are now judges. I mean, when Stanley Aronowitz personally has a friendship with a lawyer who is a judge, you know that something happened in the legal profession. Part of it was because of feminism. Feminists became lawyers, became judges, and some people who are active in labor

²⁹ LINCOLN (Walt Disney Studios Motion Pictures 2012).

³⁰ See ARTHUR M. SCHLESINGER, JR., *THE CRISIS OF THE OLD ORDER: 1919–1933 (THE AGE OF ROOSEVELT, VOL. 1)* (1957); ARTHUR M. SCHLESINGER, JR., *THE COMING OF THE NEW DEAL: 1933–1935 (THE AGE OF ROOSEVELT, VOL. 2)* (1958); ARTHUR M. SCHLESINGER, JR., *THE POLITICS OF UPHEAVAL: 1935–1936 (THE AGE OF ROOSEVELT, VOL. 3)*.

³¹ *THE GRAPES OF WRATH* (Twentieth Century Fox Film Corporation 1940).

rights activity became judges. That's a very important thing to say because those are the people who, to a large extent, came out of the movement, not out of the profession alone, but out of the movement. We haven't gotten too many other parts of the country; that's half the problem.

So, in my view, the law—and I think it can be shown—comes after the movement. The law is in some sense very contradictory in its relationship to the movement. On the one hand, it responds to the movement by having to push in certain directions. On the other hand, it's the famous phrase that we heard just before. It tries to regulate. It tries to control. It tries to suppress the movement. I think that is a characteristic of the National Labor Relations Act; I think that is a characteristic of the Civil Rights Act and the Voting Rights Act.

The idea, for the sake of argument, which may be a little controversial, I don't know—maybe it isn't—that if you have the right to vote for this politician or that politician, you have the pinnacle of human rights. Now, that's true for people who didn't have the right before. The franchise is, in fact, the important right. But that's not the pinnacle of all rights. The pinnacle of all rights is self-organization and autonomy. That's the pinnacle of rights.

PROFESSOR ROBSON: I am going to talk a little bit also about the relationship between the right to education and the right to work because you've both written about that. Interestingly, one of the things we saw when we were doing the affirmative action cases is that the court really gave great credit to the amicus briefs from GM, 3M, and the military, talking about the importance of diversity.³² So now we're thinking about diversity of education and diversity in the workforce. Maybe you could talk a little bit about that in terms of both pitting people against each other.

PROFESSOR ARONOWITZ: All right. I have to say this because it's what's on my mind a lot and I've written about this. My latest book on education is called *Against Schooling*.³³ The reason I call it *Against Schooling* is because I think there is a distinction between education and schooling. My observation, as well as my study, has convinced me that for most kids, especially working class kids, black kids, Latino kids—not all, but most—they don't learn any-

³² See *Grutter v. Bollinger*, 539 U.S. 306, 330–31 (2003).

³³ STANLEY ARONOWITZ, *AGAINST SCHOOLING: FOR AN EDUCATION THAT MATTERS* (2008).

thing in school, except discipline. Schooling is not an educational experience for many young people, even people who are in so-called middle-class schools.

That's a long conversation, but the basis of it is that I think that affirmative action is an example of an exception to that rule—that is to say, the promotion of people on the basis of a history of discrimination, on the basis of race and gender, was enacted originally by Richard Nixon. And the reason it was enacted by Richard Nixon—and this may sound cynical to you, but I don't mean it to be cynical—is because they would not spend enough money to have equal education in schools. This was going to be a cherry-picking operation by federal, state, and local authorities, as well as by the private corporations, to say, "Look, we have to have diversity, wherefore are we making sure that people have some opportunity."

But the hierarchy of our workforce and the hierarchy of our educational system should not obscure and not blind us to the fact that many people do not make it into the educational system beyond the sixth or the tenth grade; that in fact lots of kids drop out of school at the age of sixteen; and increasingly those who go to college do not graduate. The graduation rates are appalling in the United States. We should understand that.

So by the time you get to go to CUNY Law School or the graduate school of SUNY University or Harvard or anyplace else, you have been in a process which is called in France "selection"—*selectionne*. The selection of certain people to make it, which demonstrates that, if you put your nose to the grindstone and you work hard enough, regardless of your social background, you can be successful. Well, that's not the way the pyramidal structure of the American society operates. The pyramid, whether you know it, is a triangle. It has very few spaces at the top, a little bit more in the middle and at the bottom is the base of people who really never make it into the system.

Now, I have one more thing to say and then I'll stop. And that is to say that historically, the labor movement—when it was a movement, as well as community groups that were allied to working people—did not believe that the public schools, aside from the fifth grade or the tenth grade, were places for education. So they established their own educational programs. You did not read the great classics of literature and you did not read the great classics of social science as well through the schools; you learned it through the movement. You learned it from the trade unions. My grandfather—he was a worker, a cutter. When he became a citizen of the

United States, he went to citizenship school in the union local that he was a member of. And they taught him how to read English because his native language was Russian and Yiddish. And when they taught him how to read, they taught him on the basis of reading Dostoevsky and they taught him by reading *Communist Manifesto* by Karl Marx. That was an old labor movement, but that's how he learned how to read.

You could not learn how to read in schools; you learned how to read in the movement, and you learned how to write in the movement. My great uncle on my mother's side became a journalist, having been a sewing machine operator in the Yiddish press, even though he was a worker who never went to school to speak of in the old country or in this country. He just went to the union. We don't have that kind of understanding anymore.

I'm not saying we shouldn't try to fight for better schools; that's not my point. My point is, don't rely on them; that's not where it's going to happen. It's going to happen, if it happens at all, in public schools, because the rubric demands it and also has an alternative educational program, which offers to students, who are workers, a certain kind of education, which is not available in most schools.

PROFESSOR LUNG: I also want to say that we can talk about racial diversity and multiculturalism in higher education, but just how is that going to happen if we disinvest in our public schools? I mean, if we disinvest in our public schools, the way we are, where is that diversity going to come from? And so one statistic that I wanted to share was from Michelle Alexander's book, *The New Jim Crow*.³⁴ She said that nearly one-third of young black male workers are out of work. The jobless rate for black male high school dropouts, including the incarcerated, is sixty-five percent. So that educational system, who is it serving? And so if the educational system when you're in grade school, junior high school, and high school is not serving all of the population, then who's going to make it to get into college, law school, or any other graduate school?

We don't talk much about incarcerated labor [or] mass incarceration, even though we know it's a fact. It's a huge fact that many corporations that are basically extolling diversity also are some of the corporations who are using incarcerated labor to produce products.

³⁴ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

If we disinvest in public education where does that diversity or that multiculturalism come from? You see the whole movement towards charter schools, but I just don't see where that diversity is coming from. So we're going to fight at the university level and at the law school level for a very small group of people to create that diversity, when, basically, we're abandoning our education system. As a society, our money is not being put into public education. It's being put into different kinds of schools that are basically very class-based and race-based.

PROFESSOR ROBSON: How do you see student debt playing into that? Because we have a great interest in that: student debt.

PROFESSOR ARONOWITZ: Oh, student debt—I could imagine.

PROFESSOR ROBSON: And maybe a Thirteenth Amendment.

PROFESSOR ARONOWITZ: The United States is a great innovator in this direction. We have introduced into public higher education the notion of tuition. Now, for those of you who don't know, until 1977 the City University of New York did not have tuition; it was free. And, of course, you paid student fees. Then, in the fiscal crisis of 1976 and 1977, they introduced tuition. The way they got away with it was by assuring students and their parents that various federal programs would pick up the cost—that is to say, pick up the tuition. Within several generations of students, that had begun to erode significantly, and to a large extent, had begun to disappear so that the students themselves became increasingly responsible for their tuition.

On the other side of that, which is not insignificant, the thirty percent of students in higher education who go to private schools—private schools generally speaking are non-profits; I mean the private schools like the Ivies and the private colleges—those tuitions have skyrocketed so that you can spend \$50,000 a year in an institution like Harvard, Yale, or Dartmouth. Or Wesleyan, where my daughter went—we didn't pay \$50,000 at that time—you could spend \$50,000 a year and come out after four years with a debt of \$200,000 to \$250,000.

Now, obviously, student debt is not in the interest of students—or is it? Student debt is in the interest of the banks that loan the money. Student debt is one of the largest industries. Just to quote another statistic: We now know that student debt has now outpaced credit cards as the largest personal debt in the United

States.³⁵ There is a small movement, one of whose inspiration is a very close friend of mine, Andrew Ross, to address the problem of student debt, to begin to ask for forgiveness, cancellation, and so on. And Andrew knows, as well as many of the people who are now involved in the student debt movement, the students themselves—he's a professor at NYU but there are students involved, as well—that the only way that we're going to have any progress in the reduction of student debt, either in the form of forgiveness or in challenging the whole concept of student debt, is if we undertake what amounts to the right to strike, the right to take quote-unquote *concerted action* in other ways as well.

Luckily, unlike in the case of workers, students can still occupy administrative offices and the banks. Workers cannot occupy a factory; it is against the law. In the Supreme Court decision, I believe in 1938, where you had factory occupations in 1936 and '37 in the automobile industry—particularly and the rubber industry in 1936—the employers took care of that. They went to the Supreme Court, and the Supreme Court said you cannot violate the right of private property.³⁶

Now we haven't got that yet at the universities—you can still occupy administrative offices. You can still occupy—the students can still occupy the banks. Now of course they don't have a right to do that, but it's not the same kind of penalty that you have in the case of workers.

But there will have to be forms of concerted action to address the problem. And then what we might have is some law that would provide some protection against excessive tuition—and maybe I guess the continual situation in which the universities that charge tuition money are now exceeding the rate of inflation. That's one small matter. If the rate of inflation is going up approximately two to three percent a year, officially, and the rate of tuition has gone up six to seven to eight percent a year, you have a problem.

If you limited increases to the rate of inflation, which I think would be inadequate but at least it would be a step, you would begin to get some kind of amelioration of the situation. But so far, the movement of students and the movement against debt by their parents are much too small. It's not becoming an object of conver-

³⁵ See Tamar Lewin, *Burden of College Loans on Graduates Grows*, N.Y. TIMES (April 11, 2011), <http://www.nytimes.com/2011/04/12/education/12college.html>.

³⁶ See *NLRB v. Fansteel Metallurgical Corp.*, 306 U.S. 240, 256 (1939) (holding that employees' sit-down strike constituted an "illegal seizure" of employer's property, and thus the employer did not violate the National Labor Relations Act when it discharged the striking employees).

sation, and I think conversation, as I said before, is the beginning, and education is the beginning of the possibility of remediation.

PROFESSOR LUNG: Also the whole notion of student debt and why this increasing cost of education in public schools and public universities like our own is a public disinvestment from it. And when you talk about private schools, it's all about seeing education as a commodity and students as consumers.

So one college president—I forget which college—was asked, “Should it cost \$50,000 to go to your school?” And he said, “Well, we have to provide really good services for our students because they're consumers. So we have to have small class student-to-teacher ratios, we have to have nice dormitories, we have to have nice gymnasiums.” So it's the idea, the idea of this corporatization of education, seeing education as a commodity, seeing students as consumers that in part lends to this.

Then the idea about student debt. Some people say that student debt is the next housing bubble. It's the next bubble because of what happened to those subprime mortgages that were being traded in derivatives. That's also what's happened with student debt. And so the fear that's instilled is that once that bursts, that could contribute to the next economic collapse. So this issue is—and I don't think it's just the issues of loan forgiveness—I think it has to be the issue of how you contain costs. It's the same thing with medical care: it's how do you have universal health care and how do you contain the costs? I think the same thing can be applied to education.

Also, the other thing that I wanted to say that we haven't touched on is this corporatization that's going on. It's occurring on every single level. In grade schools it's talking about merit increases for teachers, linking outcomes assessments and standardized test-taking results. At the university level that's what we're also seeing—outcomes and assessments, what are the outcomes and assessments to evaluate what we're doing here, the whole notion of merit-increases versus seniority. All of that is going on.

But there are places of resistance. I think what you're asking is, when will students become very upset about student debt? When will their parents become so upset about student debt that it forms some kind of movement? We're talking about increasing the use of adjuncts to teach classes and treating them as a second tier of workers. That movement, the PSC is addressing that, but are we vigorous in it?

We talk about TAs who are being used to teach classes, but TAs are teaching assistants. Do they have the right to organize? Do they have a right to a minimum wage? So there are points of resistance that are really possible and that there are seeds of.

PROFESSOR ARONOWITZ: And we should mention that in 1980 the Supreme Court issued a decision called the *Yeshiva* decision.³⁷ And the *Yeshiva* decision said that teachers and professors in private colleges and universities are part of management. One of the great concessions that the unions made in the 1930s in the National Labor Relations Act was to exempt management from union organization—what a terrible mistake that was. Be that as it may, teachers in private colleges cannot organize into unions unless they are voluntarily recognized by the administration; there's no protection under the law.

But the other significant problem is about colleges and universities. We have a hierarchy: the associate professor, the assistant professor, the adjunct, the lecturer and the part-timer, the full-timer. We have all the same provisions they used to describe in terms of immigration. So that is a big problem. My full professor colleagues, almost all of them at the Sociology Program at the Graduate Center are full-time professors, and many of them . . . couldn't care less for the fate of the adjuncts. Students are adjuncts. One of the things we have discovered is that enrollment in higher education, especially in graduate education at some universities, including our own, has expanded for Ph.D candidates. And one of the reasons it's expanded is because they're a cheap labor force—and there may not be jobs available for them at the end of the process. So now they're beginning to restrict the admission of many to the programs at the graduate level—those that cannot be fully funded will not be admitted. That's a very bad thing in some ways; on the other hand, that's the way of restricting the labor supply.

The second thing I wanted to say beyond that is that the hierarchy of institutes foments an attitude by many parents and many students that they're willing to pay the freight—not now, because it's getting much more difficult, the bubble is beginning to burst. But historically, they've been willing to say, "Well, this is Harvard. This is Yale. This is Vassar. This is Barnard. Etcetera. We're willing to put up the money because the outcomes from being a college graduate from Barnard or Yale and so on are much better than it

³⁷ NLRB v. *Yeshiva Univ.*, 444 U.S. 672 (1980).

would be from a public university.” That is not necessarily true anymore.

PROFESSOR ROBSON: Okay, I’m going to go to my last question. Ready? It’s a big, open-ended question. So finally: what are your reflections on the outcome of the election? I think I told you it was huge.

PROFESSOR ARONOWITZ: You’re being very narrow.

PROFESSOR ROBSON: Is it about jobs, work, taxes, other central issues? One thing I saw last week—it was in *New York Magazine* and not the *New Yorker*—that said, “We just had a class war, and one side won.” Go for it. I’ve stumped you both.

PROFESSOR LUNG: I wouldn’t go that far. Maybe because I’m not a pessimistic person at all. I’m a very hopeful person. But I vacillate between thinking that this was important to thinking, “Wow, we barely won and that, basically, if we had two more weeks right before the election, maybe things would have changed completely.” Maybe the voter suppression and the infusion of all the money would have worked, and maybe if the circumstances were slightly different and we had two more weeks for those things to play out, it’s possible that the election wouldn’t have turned out the way it did. So I vacillate between both of those.

And then I guess what I do think the election showed was that it rejected basically a certain vision that there’s no role for the government. Because I think basically that was what was at issue, that the whole Romney-Ryan idea of government not having a role, I think that that was rejected. And the idea that there needs to be someone there to fight, including government, to fight for working people and the poor, even though the words “poor people” were rarely mentioned. It was about the middle class—nothing against the middle class—but the poor people were never mentioned.

And what I also think, which is what I’m really hopeful about, is that the demographics of the country really came into play. So with that—that we are becoming much more multiracial, multicultural, the Latino vote, Asians, African Americans, and the coming of age of those populations in terms of their size—that has the potential to alter the politics of this country, if we engage in the kind of organizing and the building of alliances towards movement. It has the possibility, I think, to alter the politics. I don’t think the

numbers by themselves mean that, but I think that there's a potential for that.

PROFESSOR ARONOWITZ: I am glad that Obama won the election, and I'll tell you why. Because I think if Romney had won the election and that right wing cabal that he was obliged to cater to had won the election, we would be asking for another Obama. But with Obama winning the election and the Democratic Party being mostly in power we're in a situation in which the demands that can be raised politically from the base of the Democratic Party—which, as you correctly say now, includes large numbers of blacks, large numbers of Latinos, Asians, young people, women, workers—those demands are going to have to be met because the expectations are still that they will be raised.

However, I want to just point out a few things that are not very pleasant. The past four years of the Obama administration illustrate, I think, a major point—namely, that we've reached the end of an era. This is not to say that we're at the beginning of a new era yet, but we've reached an end of an era. And that end definitively may have ended a long time ago, but it's very clear—it seems to me—that when Obama took office that his real base was Wall Street. I don't mean his electoral base but his ideological base was Wall Street. U.S. foreign policy, for example, is still sending U.S. soldiers to their death, and they will not withdraw from Afghanistan, will not withdraw from Iraq, will not necessarily stop the war that will potentially be against Iran, or at least bombing. The foreign policy of the United States has been continuous since the Cold War.

Secondly, about work and about jobs: Can you imagine—Romney made one very important point—23 million people who are out of jobs who want jobs or income? This administration—forget about whether they can enact anything, given the Republicans' control of the House. That's a serious question and we can't go into it greatly, but he [Romney] did not even use his bully pulpit to raise the question of where jobs and income might come from. He played a game, and the administration—I'm not blaming [Obama] individually, but the administration—played a game essentially of what we call neo-liberal economics, which is an economic policy that essentially believes that the market is going to solve all the problems and that government must be subordinate, ultimately, to the market. That is Obama's philosophy. And I think it's important that he be elected because I think that philosophy has to be repu-

diated. I think it is immoral. Until and as long as people begin to address that kind of question, nothing much is going to happen in these next four years.

One of the problems, obviously, is that the needs of the American people—given what I started to say before this last question—are growing. There are no automatic cyclical solutions to the unemployment crisis. We have ended that whole period of Keynesianism—that is to say, of effective demand from below; that's not where the Obama administration is going. It means that there will be increased unemployment. There will be more and more part-time and contingent labor. There will be more and more discontent in society. You know, there are people who think this discontent is a bad thing and that what we need is to make lovey to each other. Excuse me—without discontent, we're not going forward. I think we're into a period of the next four years of increasing discontent, and I welcome it.

PROFESSOR ROBSON: And that's a lot of work for us as social justice attorneys. Thank you both so much.

