**Diana S. Reddy**

**RESEARCH AGENDA**

I research and write about work as an institution, and its relationship with law. I conceptualize work law as a site where critical choices are made about the relationship between America’s economic commitments and its democratic ideals. I am particularly interested in studying tensions, real and perceived, among the multiple goals of work law. Towards that end, I seek to understand whether the same rules simultaneously promote economic egalitarianism, challenge racial and gender hierarchies, and build countervailing power, or whether trade-offs are necessary. My research often focuses on how strategic actors mobilize law, in courts of law and public opinion, to create social change, and in turn, on how mobilized public opinion can alter judicial decision-making. I consistently return to the question of what it would mean to use law to affect a meaningful decommodification of human labor.

My scholarship is shaped by my interdisciplinary doctoral training in economic, legal, and historical sociology. Empirically, I use diverse methodologies to trace the transmission and reinterpretation of legal and economic ideas across institutional fields over time. These methods include surveys, survey experiments, interviews, participant observation, content analysis, and archival work.

My scholarship is also informed by the five years I spent as a practicing labor lawyer. During that time, I represented both labor unions and workers in multiple forums: federal and state courts, administrative agencies, and arbitrations. I advised on public policy, contract negotiations, and organizing campaigns. I experienced first-hand the possibilities and limitations of work law in its current form, and I attend to both in my research and scholarship.

Consistent with my research questions, I have written or plan to write articles on the following topics: labor unions and the welfare state, constitutional political economy, political psychology and behavior, legal framing, the empirical and theoretical study of discrimination law, law and organizing, and the emergent law of the “gig” economy.

1. **Job Talk Paper**

***After the Law of Apolitical Economy: Reclaiming the Normative Stakes of Labor Unions,* 132 Yale L.J. \_\_ (job talk paper, forthcoming 2023).**

It is a consequential moment for American labor unions. Over the past decade, public support for labor unions has skyrocketed. Yet even in this moment of renewed public interest, I argue that the American conversation about unions remains constrained by the legacy of past legal decisions. Within the post-New Deal constitutional framework, unions were categorized as engaging in commercial activity, rather than advancing inherently normative claims about justice at work. I refer to this jurisprudential paradigm and the sociolegal accommodations that followed as the “law of apolitical economy.” Synthesizing labor history, legal doctrine, sociological theory on social movements, and original empirical work, this Feature traces the trajectory of the law of apolitical economy in courts, identifies its broader cultural reverberations, and marshals new evidence to show that it still matters today.

When liberal lawyers made the political and constitutional case for labor unions in the 1930s,

they operated within a socioeconomic context radically altered by the Great Depression. Instead of arguing, as labor movement leaders had in the 1800s and early 1900s, that democracy required people to have autonomy and self-determination in their working lives, and instead of advancing unions’ own emergent fundamental rights claims, they emphasized labor law as sound economic policy, boosting aggregate demand and promoting industrial peace. In the new constitutional equilibrium that emerged after the New Deal, labor union advocacy within the workplace was treated as transactional rather than normative.

This choice had benefits, but it also had costs. Under the law of apolitical economy, labor unions increasingly found themselves denied First Amendment protection for the forms of broad, solidaristic protest that built the labor movement. And as new social movements began pressing rights claims in the public sphere, labor unions came to be seen as categorically distinct, as interest groups rather than social-movement organizations. When supply-side economics gained prominence in the late 1970s, it was devastating for union legitimacy. New economic theories and the on-the-ground realities they facilitated undermined the New Deal-era economic arguments that had justified labor law. At the same time, unions’ ability to counter with broadly resonant normative arguments was hampered by the detritus of their previous legal bargain. In a moment when rights had become, in sociological parlance, the “master frame” for articulating justice claims, it was well-established that bread-and-butter unionism had little to do with rights, or even right and wrong.

Returning to the present day, I argue that the legacy of the law of apolitical economy continues

to shape contemporary discourse, even with public approval at a sixty-year high. Faced with a

decimated membership and a legitimacy crisis, labor-movement organizations have sought over the past decade to reassert the normative stakes of unionization. They have used what social scientists call “collective action frames” to show that unions further causes with defined normative stakes. These frames underscore the inherently intersectional role of labor unions in an unequal economy—as institutions that advance society-wide economic equity, racial and gender justice, and community well-being. Yet, they too often discount the value of unions’ primary statutory role: bringing workers together to improve their working conditions. In so doing, they fail to reclaim the inherently political vision of work and workers lost to the law of apolitical economy.

In conclusion, I reflect on the broader implications of this project. The dialogic relationship

between law and social movements over the twentieth century—how labor unions were steered away from rights claims while other social movements were steered toward them—continues to shape American law and politics today. In turn, upending the law of apolitical economy can be about more than reclaiming the normative stakes of labor unions; it offers an opportunity to reclaim a transformative vision of rights.

1. **Works in Progress**

***The Irrational Organization: Labor Unions and Discrimination Law* (data collection in progress).**

This Article intervenes in ongoing scholarly conversations about judicial reasoning in employment discrimination cases, and the relationship between labor unions and the federal courts, by asking how judges rule and reason in employment discrimination cases brought against *labor unio**ns* in their role as bargaining agents. Through quantitative analysis of these cases, I seek to study whether courts systematically reach different outcomes when the defendant is a labor union (compared to when the defendant is an employer). Through qualitative analysis of these cases, I seek to shed light on how judges understand labor unions, and on how they understand the relationship between discrimination, organizational form, and political economy.

A pilot study of 34 of these cases suggests that courts are more likely to find labor union defendants liable than employer defendants. It also suggests that the outcome in labor union cases may be shaped by whether the court understands unions as primarily political entities (groups of people engaged in democratic decision-making) *or* economic entities (organizations that seek to maximize value). Within this small sample, reference to the political attributes of unions was associated with a higher likelihood of finding the union defendant liable, relative to reference to their economic attributes.

From a theoretical perspective, these preliminary results make sense. Under the leading twentieth-century theory of judicial review, a primary purpose of the federal courts is to serve as a counter-majoritarian check on the political branches. When labor unions are framed as political bodies governed by majoritarian rule, federal judges may feel an institutional obligation and competency in engaging in more searching review. Conversely, if employers command judicial deference because they are seen as disciplined by economic imperatives, then labor unions seen as similarly disciplined may merit the same deference. Still, if these preliminary findings hold true, they raise important questions about how federal courts have come to construe both rational governance and discrimination itself. Do they treat markets as a more rational form of governance than democracy? And do they understand political processes as more prone to discriminatory acts than profit-making?

***Judging Disability: An Empirical Analysis of Judicial Decision-Making under the Americans with Disabilities Act (data analysis in progress).***

For several years, I have been working as part of a team of socio-legal researchers (Lauren Edelman, Linda Krieger, Catherine Fisk, Rachel Best, and Yan Fang) on what we expect to be the most comprehensive empirical study of case law under the Americans with Disabilities Act to date. We have already coded a random sample of 1,000 ADA cases based on a theoretically rich set of variables, including case outcomes, reasoning patterns, disability alleged, claims made, use of affirmative defenses, judicial politics, and many more. We began analysis of our data this summer, and expect to analyze and theorize those results in a series of articles.

***Work as Liberation, Work as Exploitation: The Legal Framing of Work* (data analysis in progress).**

This project explores whether, and if so how, cultural ideas about work and work law shifted in public discourse during the mid-to-late twentieth century. Using an original data set of newspaper articles about work from 1950-1980 as a rough yet reasonable proxy for that discourse, I analyze changes in what was said and not said about work, as a function of social movement advocacy and legal mobilization.

Based on preliminary data collection, I hypothesize that movements—operating within particular discursive contexts—varied in the extent to which they emphasized work’s exploitative or liberatory aspects. Moreover, I suggest that these frames became linked to dichotomized policy interventions, with labor law mobilized through a work-as-exploitation frame (as protecting workers from work), and anti-discrimination law mobilized through a work-as-liberation frame (as protecting access to work). The result, I will argue, is a cultural schema that fails to adequately specify the complex relationship between status inequalities and market work, and in turn, a legal regime that fails to adequately protect workers of color from discrimination as it most commonly manifests today, that is, *as exploitation*.

In the near future, I expect that this research will yield at least two articles: a peer-reviewed article that draws upon my empirical analysis to advance legal framing theory, and a law review article that focuses on the resulting bifurcation between exclusion and work quality issues. In the longer term, I consider this to be a book project. For the book, I would extend the analysis into the present, showing how public discourse about work has changed yet again in recent years—towards a claim that the standard employment relationship is repressive, and that flexible/precarious work is liberation. The book project would serve as a genealogy of ideas about work, and an examination of how social movements, corporations, and other strategic actors use law to change public discourse, and public discourse to change law.

***Interest vs. Conscience: Framing in the Contemporary American Labor Movement* (****experimental design in progress).**

This paper builds on the theoretical framework and pilot survey research set forth in *After the Law of Apolitical Economy*. Based on the premise that labor unions’ legal structure requires them to simultaneously convince workers to join unions and the public to support unions, I shed empirical light on the tension between those imperatives. Using two survey experiments, I study how contemporary labor movement “collective action frames” affect *public opinion* on labor unions on the one hand, and *workers’ interest* in joining unions in their workplaces, on the other.

My hypothesis is that there will be a meaningful divergence in how frames affect worker and public support. Existing research shows that workers tend to join unions because of their immediate workplace concerns. In contrast, my previous research shows that an emphasis on how unions improve workers’ jobs *decreases* public support. This dissonance stems in part, I argue, from the lack of a cultural frame that adequately links workers’ interests and the public interest. I also argue that it is rooted in the delegation to unions of core state functions, without adequate state support.

1. **Future Research Agenda**

In addition to the above scholarship, which is actively in progress, I have a number of projects at the conceptualization stage. I describe three of those early-stage projects here.

***Contract as Status: Analyzing the Contracts of Gig Workers.***

As workers are increasingly deemed “independent contractors” rather than employees, most empirical and normative scholarship has focused on the question of misclassification. I seek to contribute to this discussion from another perspective, by studying the actual contracts entered into by “gig” workers, and workers’ experiences (not) enforcing them. Here, I would draw data from my ongoing relationship with Turkopticon, a group of “M-Turkers” organizing for better conditions with their platform, Amazon Mechanical Turk. In it, I would explore how power, informational, and organizational asymmetries shape contracting by “gig” workers, resulting in contracts that lack clarity, consistency, and enforceability.

***Union as Protected Status: The Continuing Influence of Labor Law’s Anti-Discrimination Principles.***

This piece would center labor law as an under-theorized progenitor of the general legal principles used to evaluate employment discrimination claims by courts today. Long before the enactment of federal anti-discrimination laws, like Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, or the Age Discrimination in Employment Act, labor law prohibited discrimination on the basis of union affiliation. This article would trace how labor law anti-discrimination principles have shaped, for better and for worse, the statutory and judicial standards used in other employment discrimination laws.

***On Transaction Benefits: The Problem of Focusing Only on Social Costs.***

Finally, given my broader interest in putting economic sociology in conversation with law and economics, I am planning a piece that intervenes in legal conversations about transaction costs. My argument here would be that a theorization of transaction costs, without any concomitant consideration of *transaction benefits*, relies on an asocial understanding of economic relationships, inconsistent with historical, cultural, and sociological evidence about why societies engage in transactions in the first place. A re-emphasis on transaction benefits as a form of sociality would complicate presumptions about how best to regulate, and more importantly, would help identify the value choices that underlie all forms of regulation.

1. **Recently Published Work**

***“There Is No Such Thing as an Illegal Strike”: Reconceptualizing the Strike in Law and Political Economy*, 130 Yale L.J.F. 421 (2021)**, <https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy>.

**Featured in JOTWELL:** <https://worklaw.jotwell.com/striking-labor-laws-economic-political-divide/>.

Written in 2020, during the largest protests in American history, this Article analyzes jurisprudential line-drawing between labor strikes and social movement protest. In so doing, it highlights the law’s sui generis treatment of labor protest, and the complex reasons underlying it, while also speaking to the relationship between law, culture, and social change.

Drawing from the past to inform the present, I argue in this Article that labor law’s construction of strikes as “economic weapons” derogates their role as a form of political protest. During the Progressive Era and early New Deal as strikes gained increasing legitimacy, liberal jurists debated how best to incorporate a right to strike into a legal order that had thus far allowed employer contract and property rights to trump human rights in the workplace. And while there were robust articulations at that time of striking as a civil right, or even a property right, the National Labor Relations Act ultimately came to categorize it as permissible economic activity.

This narrow understanding of strikes limits their efficacy and normative force. In the years leading up to the New Deal, strikes were not just a way of putting economic pressure on employers; they were a way of engaging the public, fomenting class consciousness, and affecting political change. It is through a return to *that* kind of strike, I argue, that labor protest today is likely to be most effective, notwithstanding all the legal impediments.

***Protection by Law, Repression by Law: Bringing Labor Back into Law and Social Movement Studies,* 70 Emory L.J. 63 (2020) (with Catherine L. Fisk),** <https://scholarlycommons.law.emory.edu/elj/vol70/iss1/2/>.

Within the rich, interdisciplinary literature on law and social movements, most scholarship has focused on how the civil rights movement and other rights-based movements have mobilized law; less attention has been paid to the labor movement’s experience of being regulated by law. In this Article, we argue that re-focusing on the experiences of labor unions as regulated by law provides an important foil, which complicates many taken-for-granted ideas about how movements shape law, and law shapes movements, in turn.

To explore the relationship between labor unions and law at a critical historical juncture, we use original archival work to tell the largely unexplored legal history of the first major damages judgment against a labor union under the Taft-Hartley amendments to the National Labor Relations Act. Decided as the New Deal era gave way to the “rights revolutions” of the 1950s and 1960s, this case dramatizes the costs of the labor movement’s distinct regulatory framework. Law helped institutionalize unions—to give them autonomy, power, and legitimacy. At the same time, it subjected them to an increasingly restrictive regulatory scheme that made it harder for them to act—or to be seen—as a social movement.

This case study complicates ongoing conversations in the study of law and social movements by highlighting the socio-historic contingency of the most studied movements, and their relationship to law. Moreover, we argue that refocusing on labor highlights the role of law in constructing jurisprudential boundaries *between* movements over time, channeling intersectional activism into distinct legal, and thereby conceptual, forms.