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## 1AC – Labor

### 1AC – Plan

#### The United States federal government should treat any vertical restraint exercised by a firm with market power as a per se violation of its core antitrust laws.

### 1AC – Labor

#### The consumer welfare interpretation of antitrust encourages vertical integration in the name of efficiency. Franchise arrangements typify the power of firms to dodge labor regulations while avoiding antitrust liability. Increasing workplace hierarchy isolates workers from economic and political power.

Marshall **STEINBAUM** Economics @ Utah **’19** “ANTITRUST, THE GIG ECONOMY, AND LABOR MARKET POWER” *Law and Contemporary Problems* 82 p. 46-50

VERTICAL RESTRAINTS AND THE FISSURED WORKPLACE

David Weil’s book The Fissured Workplace describes a crucial component of the decline in labor’s bargaining power: the gradual disappearance of the traditional, and statutory, employment relationship.5 Instead of uniting workers at different levels of the labor market hierarchy (wages, skills, and social prestige), the contemporary corporation has become a mechanism for segregating low-wage (and even some middle-wage) workers from the economy’s dominant decision-makers: the executives and shareholders of the economy’s leading corporations and the financial institutions that own and control them. Although most workers remain statutory employees of some employer, they are increasingly remote from the decision-making entity that exerts power over their day-to-day lives and terms of work.6

Weil is himself a former senior official responsible for enforcing federal labor law, and he rightly points to the ease with which employers can evade that law by re-classifying workers as either independent contractors or as employees of their contractors as a crucial element in legalizing this fissured business model.7 Many other scholars and organizations, including worker organizations, have emphasized changes in labor law that are very important to understanding how these trends erode worker bargaining power in the economy and ensure that it takes the form of inter-firm wage segregation.8 Specifically, the National Labor Relations Act9 and the Fair Labor Standards Act,10 as well as numerous other state and federal labor regulations, impose tests for statutory employment as a necessary precondition for a worker to enjoy their protections. Increasingly, employers who classify their workers as exempt contractors rather than employees are able to pass these tests, thanks to deferential court rulings,11 technologies that enable employers to manage workers from afar, and industry deregulation that legalizes new, vertically dis-integrated business models in a given sector, among many other causes. These all give employers both the legal means and the pecuniary motive to push their workers outside the legal boundaries of the firm under whose effective control they remain.

Weil’s research is classified methodologically as industry case studies of what he calls the “lead firms” that direct and control a series of contractors and affiliates that actually employ the workers and do the work. His findings have been confirmed by more traditional economics studies of inter-firm earnings inequality using matched employer-employee data from a variety of sources.12 For instance, Song and others used social security records to document the rise in inter-firm inequality; increasingly, the highest-paid workers work for the firms where average pay is the highest.13 This is not because those firms are inherently more productive than other firms due to their firm-specific characteristics, but rather that they have gotten better at sorting out well-paid and highly-educated workers and excluding low- and middle-wage workers from their employment.14 A study by Abowd and others of data from state unemployment insurance records verifies these distinctions, and attaches further significance to working at a well-paid firm. Not only do workers earn more now, but they do so for the rest of their careers.15 “High-paying firms facilitate moving workers to the top of the earnings distribution and keeping them there.”16 Labor market surveys paint a similar picture.17

In a competitive labor market, the identity of a worker’s firm is irrelevant to what he or she gets paid, because if any worker were paid less than they were worth they would quickly switch to a job offering them their competitive market wage. In a competitive labor market equilibrium, all firms pay the same to all workers with similar characteristics. In reality, though, firms have considerable discretion to dictate pay, because outside job offers are sufficiently hard to obtain that it is unlikely that workers will have the option to leave.18 In other words, labor markets are not competitive, as evidenced by the increasing earnings inequality between firms. The aforementioned research on inter-firm inequality shows that workers are increasingly remote from profits and from centers of economic power.19 Anyone familiar with the history of labor organizing, worker solidarity, and the conditions for social mobility can recognize that under those conditions, it’s impossible for workers to benefit from economic growth. An article from the New York Times in 2017 made this point by contrasting the experience of janitors working at the corporate headquarters of Kodak in the early 1980s versus Apple today. The Kodak janitor was employed by the company, enjoyed a tuition subsidy as part of her benefits package, learned how to use inventory software as part of obtaining a college degree on the job, and ultimately worked her way up within Kodak to be head of IT for the whole company. 20 Meanwhile, the Apple janitor is employed by a contracted, franchised janitorial services firm, enjoys no part of the benefits package of an Apple employee, and has no chance of obtaining a promotion up the hierarchy of what is now one of the economy’s most valuable single firms.21

The antitrust side of the story of the separation of workers from lead firms is the simultaneous erosion in the jurisprudence of the Sherman Act’s prohibitions on vertical restraints. In the context of antitrust, a vertical restraint is a contractual provision or mode of operation that restricts the autonomy of the counterparty in the case where each party operates at a distinct segment of the supply chain. For example, if an automobile manufacturing company operates a network of independently owned dealerships, and its dealers are forbidden from selling within a given radius of another authorized dealer’s location, that is territorial exclusivity, a non-price vertical restraint. If such a contract imposes the final retail price of said automobiles, that is vertical price-fixing, or in antitrust lingo, resale price maintenance, which can be either a minimum or a maximum (or both, in the case of one definite price at which the car would be re-sold). Other vertical restraints include the varieties of exclusive practices that suppliers might impose on their affiliated dealers or distributors, like compulsory purchase contracts—known as full-line forcing or requirements contracts.22

Such exclusive dealing was the subject of the 1951 antitrust case United States v. Richfield Oil Co.23 The case concerned the relations between a dominant oil refiner and gasoline supplier—Richfield Oil—and its affiliated service stations, which were required to source their gasoline solely from Richfield and to carry exclusively retail auto parts, sponsored products, according to supply contracts negotiated by Richfield, rather than seeking out and negotiating their own sources of supply according to their customers’ preferences. The court ruled unequivocally for the government on the grounds that it exercised de facto control over these “independent business men,” in contravention of the antitrust laws, despite the fact that they were not employees of the company. That case created a sharp distinction and a comprehensive delineation between the realm of labor and antitrust: if subordinate entities are “independent business men” and not employees, it is illegal to exercise control. The United States Supreme Court affirmed the same basic principle against coercion of non-employees by vertical supply contract in the 1964 case Simpson v. Union Oil Co. of California.24 It is precisely through the erosion of the Richfield Oil standard that the fissured workplace has been allowed to come about. Independent business people are independent for the purposes of evading labor law, but once pushed outside the border of the firm, the restrictions antitrust places on their domination have been all but erased. As such, what Weil calls lead firms can continue to exercise control and direct their business operations by contract.25

Those contracts would once have been illegal, before antitrust jurisprudence began to search out spurious justifications for their immunity on the basis of supposed efficiency.26 For example, manufacturers would want their branded distributors to be bound by contractual provisions to ensure that dealers represent the brand effectively to customers, rather than hide their poor customer service behind the brand’s overall prestige, or that they must contribute to its marketing budget and abide by its standardized branding and pricing policies. Theoretically, this would serve the overall collective interest of the supplier-distributor network. The efficiencies to be gained by permitting franchisors to exercise overall direction and control were assumed to flow eventually to consumers in the form of increased output, enhanced variety or quality, or lower prices—all reflecting the fact that vertical control exercised this way is, in fact, pro- rather than anti-competitive and therefore ought not to be penalized by the antitrust laws.27

Brian Callaci lays out how this process occurred in one sector, so-called business-format franchising.28 As he writes, “While the economic boundaries of the firm correspond to the extent of centrally planned and hierarchically coordinated production, the legal boundaries are set in politically contested legislatures and courts. Exploiting or creating mismatches between the two has enabled corporations to enjoy economic benefits of vertical integration while avoiding many of the legal risks and costs.”29 In the case of franchising, that took the exact form that courts had ruled illegal in Richfield Oil and Simpson v. Union Oil Co. of California: franchisors licensed their trademarks and business models to an army of franchisees, who would be granted exclusive territories in exchange for agreeing to exclusive supply contracts, all enforced by the threat of dealer terminations.

Economists, particularly those operating in the Law and Economics tradition, have interpreted the rise of these hybrid structures, part firm, part market organizations, as reflecting the evolution of an efficient allocation of coordination rights and the alignment of incentives between principal and agent so as to remove the need for direct supervision and take advantage of economies of scale and specialization.30 But Callaci shows that, in fact, the advent and spread of franchising was not due to the law catching up with the natural evolution of a business model marked by superior efficiency. Rather, it is due to a concerted lobbying campaign31 to pry apart the sharp border between labor and antitrust represented by Richfield Oil and grow a whole business model in the legal gray area.32 As far as antitrust was concerned, the operation was meant to roll back the per se illegality of non-price vertical restraints that existed in antitrust following the Supreme Court’s ruling in United States v. Arnold, Schwinn & Co. in 1967, and the per se illegality for maximum resale price maintenance that existed following the Court’s ruling in Albrecht v. Herald Company in 1968.33 With the Court’s decisions in Continental Television v. GTE Sylvania in 1977 and in State Oil Co. v. Khan in 1997, antitrust immunity for vertical integration by contract was complete.34

#### Antitrust law allocates the right to coordinate economic activity. The consumer model of economic efficiency privileges allocating coordinating rights to large powerful firms.

Sanjukta **PAUL** Law @ Wayne State **’19** “Fissuring and the Firm Exemption” *Law and Contemporary Problems* 82:65 p. 68-72

A. Franchising

Franchising typifies the dynamic that has driven the expansion of large firms' coordination rights under conditions of business fissuring: an iterative interaction between shifting legal norms and affirmative decisions about structuring business arrangements. Franchisors succeeded in normalizing their business model in the eyes of the public, institutional actors, and the decisional law, relying to a large extent upon arguments that the business arrangement is efficiency-enhancing, ultimately benefiting consumers.1 2 However, aspects of the standard franchising business model still outstrip the now-permissive vertical restraints cases, and reveal tensions in the reigning consumer welfare standard.

Overall, by confining antitrust-immunized control relations largely to the space within the firm-and to a few more democratic arrangements outside the firm-mid-century antitrust had historically placed some limits on the unreciprocal control exerted by franchisors over franchisees. Mid-century antitrust took a dim view of control imposed through vertical, contractual restraints, for example by franchisors upon franchisees. Importantly, this view was motivated more by a norm of non-domination than by an idea of realizing ideal competitive prices, or of attaining the lowest possible consumer prices.13 The Borkian turn in antitrust law that took hold in the 1970s worked to remove these limits on vertical restraints.14 By doing so, it demonstrated that its fundamental preference for allocating coordination rights is not only within firms, but also by large, powerful firms (at least so long as that coordination too is in the form of control over less-powerful actors). Around the same period, the Borkian turn expanded antitrust law's concept of the firm itself, to capture parent-subsidiary relationships and other corporate groups, and thus extended antitrust immunity to any coordination between separate corporations within these relationships." The single entity doctrine, as it is called, expressly inscribes the preference for economic coordination in the form of control, preferably grounded in concentrated ownership interests." Franchisors have used and relied upon both of these changes in antitrust law to justify their control over franchisees and at times, franchisees' employees.

Fast-food franchisors coordinate their franchising families various ways. They exert control over key elements of franchisees' supply, labor, and product decisions. Notably, they even exert control over the prices of the products sold by franchisee firms, typically in the direction of driving them down. One McDonald's franchisee noted that "participation in deals and pricing is voluntary only in theory," and that on an occasion when its coffee price was a nickel over the franchisor-advertised sale price, "the head of the McDonald's region came in and he said: 'You are over. You can't do this."'17 Some other franchisors even more straightforwardly set the prices charged by franchisee firms; for example, janitorial franchisors often directly bargain contracts with customers on franchisees' behalf."s Burger King, like McDonald's, exerts the same downward pressure on its franchisees' prices through its "Value Menu."19

Franchisors have also placed limits upon worker mobility within franchise "families" through so-called no-poaching provisions placed into franchisee contracts. In the past, franchisors have successfully claimed immunity for these controls under Copperweld, or the single entity doctrine, thereby claiming that franchisees are effectively extensions of the franchisor itself.20 Such provisions have recently come in for new criticism, and have been challenged by workers in a number of pending cases. 21 In the current disputes, some franchisors have again raised the single entity defense, but thus far a judge has not ratified it. To expressly ratify this theory would be to make explicit the selective application of firm status to franchise "families" as between antitrust and labor law. Franchisees themselves are denied coordination rights by antitrust law,22 further cementing franchisors' power. Meanwhile, franchisees' employees' fight for coordination rights, for example in the form of unionization, has also been frustrated by franchisors' position that they are completely separate from franchisees, which would require workers to separately unionize numerous small franchisees. In short, franchisors have thus far been permitted to disclaim affiliation with franchisee firms altogether under labor law, even as they frequently claim that franchisees are extensions of the firm under antitrust, in both cases cementing their exclusive coordination rights in the overall arrangement.

The pending no-poach cases also illustrate the operation of the law of vertical restraints and franchisors' attempts to stretch its limits. To see this, note first that even franchisors' control over franchisee product pricing decisions ought to be uncertain territory. As noted, franchisors exert control over consumer prices charged by franchisees, in addition to aspects of their dealings with suppliers and workers. Even under the existing law's profound preference for vertical control over horizontal coordination, franchisors' control over franchisee pricing-which in turn has direct, negative implications for franchisees' labor relationships and workers' wages 2 3-does not obviously fit within the parameters of legal vertical restraints. The paradigm cases, from GTE Sylvania (geographic market allocation) to Khan (maximum prices) to Leegin (minimum prices), all deal with re-sale of a product sold by the actor seeking to impose the restraint. Franchisors do not sell hamburgers to franchisees, who then re-sell them. This problem is not necessarily resolved by extending the principles of these cases to intangible property-such as the franchise brand-which are covered.24

There is, in any event, no credible argument for extending these precedents to labor-facing restraints imposed by franchisors upon franchisees. Franchisors do not hire out workers to franchisees. No proprietary technology licensed by franchisors to franchisees is implicated in those relationships. Yet the Department of Justice chose to file a brief in these pending cases effectively supporting franchisors' position and suggesting that no-poach agreements limiting mobility among some of the lowest-wage, most vulnerable workers have legally cognizable benefits.25 This is notable in part because it dramatizes the tensions in antitrust law's current governing normative framework. The DOJ brief purports to treat labor market restraints symmetrically with product market restraints. But this is belied by their own arguments about the putative countervailing efficiencies of no-poach agreements, which are framed purely in terms of consumer benefits, namely lower prices. This points up a basic tension within the existing legal framework, which simultaneously claims to treat worker welfare equally with consumer welfare, but which only admits evidence of countervailing benefits to consumers, primarily price benefits, when evaluating forms of permitted coordination. In short, the DOJ's briefs supporting franchisors' position in the pending cases brought by fast food workers to invalidate employee no-poach agreements imposed by franchisors upon franchisees stretch existing tendencies in the law to favor control by powerful firms, which is presumed to confer consumer benefits.

In effect, the DOJ's brief seeks to enshrine in the official, surface grammar of the law what has heretofore been only a tacit expansion at the level of its deeper grammar, where the firm exemption partially resides. That tacit expansion of the borders of the firm exemption has been achieved through decades of creating facts on the ground by naturalizing franchisors' business model, and through economic arguments that these arrangements are efficiency-enhancing because of lower consumer prices.

#### We should allocate coordination rights on the basis of power rather than efficiency.

Sanjukta **PAUL** Law @ Wayne State **’19** “Fissuring and the Firm Exemption” *Law and Contemporary Problems* 82:65 p. 85-87

TOWARD A RE-ALLOCATION OF COORDINATION RIGHTS

Contemporary fissured business arrangements distill the preference for topdown, hierarchical control of smaller players by more powerful firms that is already present in today’s antitrust framework, while often pushing beyond the boundaries set by the current expression of that framework in the surface structure of the law. They call out for a re-allocation of coordination rights under antitrust law. What criteria are available to effect this re-allocation, and on what basis should it be achieved?

Our current framework recognizes one other relevant source of coordination rights, beyond the firm, and that of course is based in labor law. The labor exemption to antitrust essentially permits economic coordination that antitrust would otherwise condemn where individuals engaged in the performance of labor or services are sufficiently subject to the power and control of a firm, and lack significant power and control—including relevant ownership rights—of their own.75 From this perspective, the labor exemption has always—or at least, long— been a limited qualification of the firm exemption, and it has been in a basic way dependent upon it. The limited qualification represented by the labor exemption is underlined by the fact that the collective power of labor—even if it were fully realized—cannot legally be brought to bear to contest basic firm or capital decisions, an outcome that Karl Klare and others have shown was not intrinsic to the Wagner Act itself, but was instead imposed by a contingent turn in the decisional law.76 Given this basic derivative relationship of the labor exemption to the firm exemption, it is then no wonder that the superficial undoing of the firm has further undone the labor exemption.

How might we conceive of a new allocation of economic coordination rights that would avoid some of these problems, which have undermined the New Deal order almost beyond recognition? Attempts to broaden the labor exemption or to create new worker exemptions while retaining or copying its basic structure are unlikely to be sufficient. Fissured business structures show that the firm, which was never a platonic ideal to start with, will continue to change and mutate—partly of course in response to the law’s own allocation of coordination rights. Imagine if all workers or individual service-providers currently classified as independent contractors gained coordination rights. What would stop many firms who currently use independent contractors from moving to a system of contracting with, say, two to three person “firms” of workers—firms that are conveniently incorporated by signing ready-made forms in the company’s office upon hiring? These groups of workers would of course lack coordination rights in their bargaining with the firm that retains their services, and their intra-firm coordination rights would be negligible. The law should not allocate coordination rights to working people on the condition of particular business structuring decisions made by others. But such decisions are the inevitable response to smallbore redefinitions of the labor exemption, as fissuring itself teaches us.

Instead, we might consider allocating coordination rights on the basis of power and social benefit. Importantly, to guide the application of these concepts, we must first discard the ideal-state competitive order as the default normative framework for antitrust and for economic regulation more generally. This is not to say that competition as a social process, referring to healthy business rivalry, is not important to antitrust law: it is, and ought to be balanced with appropriate and socially beneficial coordination. However, once we realize that the ideal state concept of competition that is currently presumed to form the basis for antitrust law is contributing very little—except as a smokescreen for other normative choices—then we need no longer view economic coordination as a special exception to the order of things. Thus, we need not look for conditions of deprivation, or powerlessness, as constituting the sole basis—aside from the firm exemption—for the appropriate exercise of coordination rights because they are an exception to an otherwise perfect order. That is what our current framework does, and it is also the assumption on which even the most ambitious reform proposals proceed.77

Instead, once coordination is no longer a special exception to the ideal-state competitive order, we may think of allocating coordination rights not only in order to contest existing power over someone—in other words, to contest conditions of domination—but more broadly and positively, to allocate coordination rights in order to confer a social benefit and so long as the coordination does not result in power over someone else. In this vision, power would be a constraint upon coordination rather than the criterion of its permission. So, truck drivers would be able to engage in direct price coordination among each other, so long as that coordination did not result in the undue exercise of power over some other group of people: other truck drivers or customers, for example.78 They would not have to show that someone else has power over them—whether through prices, or something else—in order to engage in coordination. Indeed, within such a framework, each of the groups discussed in Part II—franchisees, Uber drivers, and independent contractors— would quite plainly be allocated coordination rights. The precise scope of those rights should be determined in order to ensure that undue power over other groups does not result. Moreover, the availability of those rights would largely not depend upon unilateral decisions made by the lead firms in any of these arrangements in defining their relationships with workers, franchisees, or others in their orbit. Thus, small players’ coordination rights would be more secure than those allocated by a broadened labor exemption or other new exemption. Conversely, on this alternative approach to the allocation of coordination rights, antitrust law would not permit powerful firms like Uber and McDonald’s to exert control over small, less-powerful players like drivers and franchisees. However, rather than prohibiting this coordination on the ground that it facilitates horizontal coordination that is presumptively bad, antitrust law ought to take the view that it is impermissible because it unduly exacerbates power imbalances and domination, and confers no social benefit that would not be better realized through more democratic forms of coordination.

In both directions, a conscious re-allocation of coordination rights would work toward balancing undue asymmetries of power rather than exacerbating them, as the current antitrust framework does, particularly in the context of fissured business arrangements. In order to do so, it would also recognize that the current framework makes normative choices about allocating coordination rights that cannot be derived from putatively neutral principles supplied by the competitive ideal.

#### Contesting conditions of domination should be a core political-economic value and basis for organization.

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This diagnosis of unequal economic power recasts the problem of modern capitalism as one not of income inequality but rather one of domination—the accumulation of arbitrary, unchecked power over others.38 Domination, as suggested by these Progressive Era critics, could manifest in both the concentrated form of corporate power and the diffuse form of the market system itself**.** Domination captures a wide range of the moral harms in an economically unequal society: the subjugation of workers to corporations, the subrogation of the public as a whole to monopolies and “too-big-to-fail” banks, and the ways in which diffuse patterns of discrimination or market structures might constrain individual and collective freedom. The problems of our unequal society are not just matters of distributive justice and income. To overcome these challenges we must do more to ensure that all Americans have real, meaningful freedom to shape their own lives—and that means have a real voice, a real share of power in economic, social, and political realms. The freedom that domination threatens—the freedom we must seek to realize—is not the libertarian freedom of consumer choice and market transaction; it is the richer freedom to live lives we each have reason to value—a freedom that is expanded with our capacities and capabilities to have real agency in the world. In short, it is the freedom of being an agent, capable of authoring one’s own life and coauthoring collectively our shared political, social, and economic life. This is the freedom that is constrained by the accumulation of unchecked power, whether by the state, the corporation, or the market itself.

#### Antitrust plays a key role in contesting workplace domination. The legal strategy of separating a firm from its workers means any challenge to corporate power should prevent firms from separating workers from shares in decision-making and profits.

Marshall **STEINBAUM** Economics @ Utah **’19** “ANTITRUST, THE GIG ECONOMY, AND LABOR MARKET POWER” *Law and Contemporary Problems* 82 p. 61-62

CONCLUSION: USING ANTITRUST TO RE-BALANCE POWER IN LABOR MARKETS

This paper sets out an important but under-appreciated aspect of the rise in labor market precarity and diminishing worker bargaining power: the erosion of antitrust laws restricting dominant firms’ ability to use vertical restraints to control and restrict both less powerful affiliates and the workers who work for them, and the concurrent use of antitrust against any attempt by those workers or independent businessmen or contractors to bargain collectively against such concentrations of power. In ascertaining the causes of contemporary inequality in wealth, income, and social status, especially with respect to the labor market, we cannot overlook the role that antitrust has played.

This contrasts with a recent Economic Policy Institute paper by Heidi Shierholz and Josh Bivens that treats the rise of employer power in labor markets, and the extent to which weakening antitrust has caused that phenomenon, as a less important cause of rising inequality and stagnant wages compared to the erosion of labor law and thus of collective bargaining.95 Their evidence for the contention that diminishing worker bargaining power matters more than concentrated employer bargaining power is that inequality within the distribution of labor income is a more significant cause of stagnating wages and the growing gap between median worker pay and average worker productivity than is the declining labor share of national income, which is of more recent vintage than either of the first two economic trends.

But we cannot map rising labor income inequality to worker bargaining power and labor law and the declining labor share of income to employer power and antitrust so neatly. As the analysis in Parts II and III show, income inequality is to a large extent caused by rising earnings inequality between firms, rather than between workers, reflecting employer power to set wages. This is the result of the legalization of business models like the fissured workplace that allow powerful employers to segregate workers from the profits they earn for their bosses. The point of Part II of this paper is that the fissured workplace is the product of both labor regulation and antitrust. Thus, increasing inequality of power between employers and workers cannot be coherently treated as two separate phenomena: rising employer power, and declining worker power. That means the solution to unequal bargaining power is not necessarily or not entirely an antitrust solution, but antitrust must play a major part, since it implicates the business models available to the economy’s dominant firms. In particular, we should seek, through revived antitrust and labor regulations that both take account of how the economy actually works, and how power is exercised within it, to re-establish the sharp distinction embodied in Richfield Oil.

Either workers are employees, in which case they can be controlled by their bosses, who in turn owe them statutory protections including the right to bargain collectively, or they are independent businesses, in which case they cannot be coerced by contract or by any other means. Proposals to extend and strengthen labor law tests for statutory employment to take account of gig economy technologies are crucial, but they will be ineffective so long as employers and lead firms retain the strong incentive to push workers outside their protection. The role of antitrust in that context is to create a significant cost to so doing: the potential for treble damages under antitrust liability should a lead firm be caught coordinating and directing the activities of its non-employee subsidiaries and contractors. That is the mechanism that would weigh against employers’ incentive to mis-classify.

Putting such an antitrust regime in place entails the abandonment of both the consumer welfare standard and, with it, the Chicago School’s jurisprudence of vertical restraints. Instead, any vertical restraint, price or non-price, should be a presumptive violation of the Sherman Act if it is imposed by a firm with market power. And antitrust’s definition of market power must, in turn, be expanded beyond the confined market-share-based Sherman Act jurisprudence to instead take account of the many ways economists have of testing for the existence of market power. Firms would be judged to have market power if they:

• Have the power to unilaterally raise prices for their customers or lower them for their suppliers, including workers;

• Wage- or price-discriminate among customers, suppliers, or workers;

• Unilaterally impose non-price, uncompensated contractual provisions on their counterparties, like non-compete agreements in labor contracts;

• Impede or control entry by would-be competitors; or

• Earn profits and/or make payments to their shareholders at a rate in excess of their market cost of capital.

All of these things are economic indicia of market power because they could not be done by any one or more firms acting in concert in the face of competition from rivals—therefore they should be legal indicia of market power as well.96

Drilling down on how the antitrust laws should target labor market monopsony in particular, not merely prohibit vertical restraints that enable fissured workplace-style business models, the antitrust authorities should bring a monopsonization suit against an online labor platform like Uber that fixes wages and imposes exclusivity on independent businesses, along the lines of Meyer v. Kalanick. If, as would be expected, that case would be adjudicated under the Rule of Reason, despite its economic equivalence to the FTC’s per se cases against professional organizations and unions of independent contractors, then Congress should streamline the Rule of Reason for labor monopsony. This should be done along the lines proposed by Ioana Marinescu and Eric Posner, setting out principles to guide market definition that are responsive to measured firm-level labor supply elasticities.97 In fact, if firms have the unilateral power to dictate wages without causing a significant share of their workforce to leave, then the proper market definition for a monopsonization case may be significantly smaller than the one those authors recommend as a baseline. The point of such a suit is to force Uber to choose one business model or another: either employ the drivers if Uber wants to fix their wages and monitor them on the job, or give up the pricesetting and market coordination power that makes the platform such a value proposition for its investors. It cannot be allowed to do both. Meanwhile, workers themselves who are not statutory employees should be protected by antitrust’s labor exemption and should be permitted to bargain collectively. However, any such extension of the labor exemption must not also immunize the powerful employer against whom they would seek to bargain. And at the very least, both no-poaching clauses in franchising contracts and non-compete clauses in employment contracts should be illegal per se.98

**The imperative of efficient firms hands despotic power to bosses. Democratizing the governance of firms is key to genuine democracy.**

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This book addresses a fundamental tension between capitalism and democracy, a tension so great that it has the potential to lead our democratic societies to the brink of collapse. It begins with the observation that life in Western democratic society has created an expectation of voice in the economy and the workplace, which cannot be fulfilled by the arbitrary way in which most firms are run. To be a citizen and to be an employee today is to live with a great contradiction between the democratic culture of our times and the reality of the work experience. Our democratic culture gives citizens a hunger for a voice in the way their lives unfold, while their experience in the workplace is one in which they are reduced to mere production factors. Capital investors truly are “more equal than others”1 within contemporary firms – specifically, more equal than the employees who invest their labor in those same firms. Capitalism grants capital investors despotic power – in the original sense of that term2 – over ­­ labor investors, who, in a capitalist economy, are considered to be elements in the means of production. This runs counter to the democracies in which capitalist firms have flourished, and this contradiction has necessarily affected contemporary workplaces: employees today struggle with a range of problems, from lack of motivation and absenteeism to depression. It affects the world outside the workplace as well: the financial, environmental, social, and political crises we now face all press us to examine the role and structure of the firm as an institution within the context of our democratic societies. This book offers such an examination, and its conclusion is unambiguous: firms are better understood as political entities, and not mere economic organizations. Economic organizations they are, but they are much more than that as well, and it is time to acknowledge this fact. If democratic societies do acknowledge this, they will be called to begin to treat firms like all of society’s other institutions: not only endowed with rights, held accountable for discharging specific responsibilities. As political entities, it is crucial that firms be made compatible with the democratic commitments of our nations – in other words, democratized.

The political project that organizes our lives inWestern democracies is driven by a democratic ideal. By this we mean “a compelling normative idea, requiring that people be treated as equals in the process of collective decision-making” (Cohen 2009: 6). This entails that the government be a government “of the people, by the people, for the people,” according to Abraham Lincoln’s Gettysburg Address in 1863. Despite the physical, material, intellectual, and cultural differences of our members, we as societies have declared all citizens to be equal, and organized our institutions in ways intended to help us perceive and treat each other as equals. As Article 1 of the Universal Declaration of the Human Rights affirmed in 1948, we are born “free and equal in dignity and in rights” – equal, and therefore fit to participate in choosing the collective standards that order our lives. But as this book will argue, these assertions are not taken seriously in the world of work. As the level of inequalities within and among nations reaches historic levels (Piketty 2013, Milanovic 2016), people around the world are increasingly impatient with the failings of democracy. They are aware that their life prospects and those of their children differ drastically depending on whether they are born rich or poor – and what clearer violation of the standard of equality underpinning the democratic ideal could there be? Of all aspects of contemporary life, the world of work would seem to be the last great holdover from a bygone era in which despotic and plutocratic rule was the norm. The unsettling cognitive dissonance to which this state of affairs has given rise is plain: in their everyday lives, citizens are enjoined to behave as responsible members of their democratic society. As electors, they are presumed capable of coming together to decide important political questions such as “Who should be president of this country?” or “Should this country leave the European Union?” And yet these same citizens, when they arrive at their jobs, become the subjects of a despotic corporate government in which profitability is the main criterion for all decisions. This criterion of profitability is just as ill defined: Whose profit? To what end? According to what terms? Over how long? In my work as a sociologist, I have observed that employees today live with a contradiction that I, reading it from a Marxian perspective on capitalism, have identified as the capitalism/democracy contradiction. It raises significant questions: What are the limits of the current confrontational coexistence of capitalism and democracy? And, in practical terms, how are we going to reconcile, escape, or end this confrontation? What can be done moving forward to solve the contradiction? Essentially, the road diverges ahead, and we must choose: more capitalism or more democracy. The former will grant more arbitrary power to those who own capital, giving “capitalist despotism” freer rein in our work lives and beyond. The latter leads toward a reinvigorated version of democracy, in which the political rights granted to working people are at least the same as the political rights accorded to capital owners.

To offer a concrete example – not to say an ideal type – the United States has, for the past four decades, been on the path toward capitalist despotism. Corporate money provides limitless funds to electoral candidates; the U.S. Supreme Court’s Citizens United ruling declared that corporations are to be considered as people with the right to free speech; and a significant proportion of social and cultural life has come under the influence or even the direct leadership of corporations, from prisons to sports arenas. In January 2017, as this book is being completed, Donald Trump, a billionaire corporate leader with a track record as a capitalist heir, is about to be sworn in as the country’s president, showing just how far down the path of capitalist despotism the United States has gone. For the time being, and perhaps for the foreseeable future, the United States appears to have resolved the capitalism/democracy contradiction by choosing more capitalist despotism and less democracy.

Yet, what analysts have referred to as a populist revolt against the establishment in the November 2016 election expresses nothing so much as a deep “hunger for democracy” (Ferreras 2007b). People raised as citizens in a democracy aspire to have some agency over the course of their own lives, and the past decades have shown them with aching clarity that this aspiration to agency is little more than a dream.3 It seems clear that the time to explore the alternative route is now. The path of more democracy, as a project of deepening and extending democracy (Olin Wright and Rogers 2015), is a long, historic avenue, the one down which social justice and progress have advanced. It is the long path of emancipation, distinguished by the enfranchisement of different categories of people previously considered unequal. If we are to continue down it today,we must dare to look closely at the specificities of the world around us. This book does just that, and offers a map for the next step, which is the democratization of the corporation. If we fail to take this step, we will be forced to a standstill, from which we will see capitalism eat up what is left of political democracy**.** To forge ahead – and we can – we must keep moving toward more productive4 institutional arrangements in the firm. This book, then, offers a way out of the impasse of “capitalist democracies” (Cohen and Rogers 1983) in which we now live, in which the standards organizing our – capitalist – economies are set by capital investors, while the purportedly egalitarian standards organizing the rest of our – democratic – political life are set by all.

In the West, our age-old understanding of the economy as private in nature has worn away to the point that it must be reconsidered. What should be considered private has changed considerably with time: our economy began as agrarian, became industrial, and is now service-based. More and more employees now work in full or partial view of the public, meaning that the economy, considered since antiquity to be private (the term economy being derived from the Greek oikos-nemein, or the management of the household), is now experienced by many of those contributing to it as part of the larger public space. Service employees greet their fellow citizens as customers face-to-face, over the phone, and through the tentacular world of the internet; even those not in direct contact with customers are constantly reminded of their importance and presence. Beneath the constant gaze of citizen-customers, the corporation household, once intensely private, has slowly moved into the public sphere. This is a shift the full impact of which has yet to be measured. In advanced democracies, we take as given that the public sphere should not be dominated by the power (kratein) of a single (auto-) person, nor by a small group of individuals, valiant, intelligent, or rich as they may be (aristo- or pluto-). Democratic societies have agreed that the public sphere is a space through which people – the demos, all themembers of the democracy – should express their sovereignty, both as individuals and as a society. If this is so, and if the workplace has shifted into the public sphere, then shouldn’t our reference point for its government also shift from the household (oikos) to the people – demos? Analyzing the experiences of those who invest their labor in the firm, I have found that it is impossible to ignore the ways in which they are steeped in notions of democratic justice. Work, for those who do it, is a fundamentally expressive experience. This is, in fact, one of the fundamentals of my argument, that those who invest their labor in firms are motivated by expressive rationality. By this I mean that the work experience resonates with meaning that is constructed by those doing the work, and that this meaning is derived by mobilizing concepts of what is just and unjust in the life of a community – what political philosophers generally refer to as the “political.”

Although it is hardly surprising that traces of democratic culture should be perceptible in the workplaces of democratic societies, this reality has remained strangely invisible. I will mobilize research in corporate and labor law (among other fields) to argue that this is because the idea of the corporation has managed to eclipse the idea of the firm, allowing corporate shareholders to maintain all power over it. As I will explain, the dominant economic theory of the firm reduces the firm to a mere corporation at the center of a nexus of contracts, including labor contracts. In this sense, it practices what I call a Reductio ad Corporationem: it folds the firm into the corporation, despite the fact that the latter is merely the legal vehicle that structures capital investments. It does this by pretending that the fundamental qualities of a firm are identical to those of a corporation. This occludes an immense portion of the firm’s reality. In this way, the economic theory of the firm, while claiming scientific neutrality, has in fact upheld and validated a very narrow approach to the firm (and even to the corporation, as we shall see in Part II) – one that has helped shareholders maintain an excess of power. The scientific task pursued by this book is to initiate the development of a political theory of the firm5 as an alternative to this Reductio ad Corporationem by shedding light on the dense reality of the firm not captured by the description and institutional design of the corporation. It will examine the actual relationship between the corporation and the firm, rather than ignoring or obscuring that relationship.

This alone is a vast project. This research agenda cannot possibly be addressed without a dedicated collective effort. A great deal of research into this topic already exists. Unfortunately it has so far remained isolated in different corners of the social sciences. This research needs to be drawn together – and, I believe, deployed – through the hypothesis put forth in this book: to consider firms as political entities. To do so requires addressing three dimensions of the political theory of the firm: the substantive, the descriptive, and the normative. The political theory of the firm mobilizes analytical categories coming from the body of literature in political analysis and political theory to look at the life of the firm. Its evaluative and critical aspects – the normative dimension of the theory – will flow straightforwardly from the substantive and descriptive dimensions. In the interest of giving life to this new research landscape made of the many existing, scattered contributions that the author of these lines could not possibly hope to know of, and cite, this short book contains a proposal that draws practical conclusions from the analysis it provides, as a lens for looking to the future. The imperative of efficiency conditions economic life today, and the imperative of collective freedom conditions public life inWestern democracies. The continued growth of our economy and our society demands that we identify a viable compromise between the two. As current events constantly remind us, the grave risks posed by the shock of these two imperatives are inescapably present, and the need for compromise inescapably important. We as citizens are facing big questions, and our democracies cannot afford to shy away from them. Can efficiency and justice be reconciled? How compatible are capitalism and democracy? Can capitalism be democratized? My own research into the workplace led me to these questions – and then to the observations and to the proposal put forth in this book. I have written a text intended to inject new life and new energy into an often shopworn and anxiety-inducing debate. The ideas I offer in the pages that follow are the beginnings of my own attempt, as a scholar and a citizen, to seriously and pragmatically envision a sustainable future for our democracies threatened by financial global capitalism, and more specifically by the current confusion of the corporation with the firm.

I am a labor sociologist and a political scientist, but the work I present here is strongly interdisciplinary, as is required by such vast questions. Because this is a book about the future of democracy and capitalism, I have grounded my analysis in the past, which is, after all, an indispensable reference point if we are to look ahead. Specifically, I have grounded it in political history: although the transition is arguably still in process, over the long term ourWestern societies have progressed from absolutism (in the form of autocracies or oligarchies) to democracy. For this reason, in my thinking about the government of the firm, I chose to draw inspiration from political revolutions, since the central issue that caused them is the same one now faced by the capitalist firm: how power ought to be shared. As I will explain, in the history of Western democratic revolutions the transition from absolutism to democracy occurred through a specific institutional innovation. Although it varies from country to country and from context to context, this transition has always involved what I call a bicameral moment. In modern history, England may be considered as having given birth to this compromise: faced with the prospect of losing it all, the king of England realized it was necessary to share his power. British bicameralism was his tactic for avoiding fatal revolution, a compromise with the people in the form of a partial democracy that seated landed aristocrats in the House of Lords and the representatives of the people in the House of Commons, with an executive branch accountable to both. The king’s government had to win the majority in both Houses to pass a law. Today’s workplace bears a more than passing resemblance to a pre-democratic state, with upper management holding the place of the pre-democratic executive branch of government. It is an institution governed by a property-owning minority that profits from the labor of the majority. The parallel is arresting: What would you think of an England governed by the House of Lords alone?

Bicameralism was a radical idea because it was so simple. This book seeks to inject the same radical simplicity into the debate over governing and democratizing capitalism – not to oversimplify the questions we face as societies, but rather to offer solid foundations for that debate. It begins with the observation that work has shifted from the private to the public sphere; that employees are suffering from the tension between their aspiration to greater voice in the workplace and the authoritarian power structures that continue to hold sway there; that the formerly “private household” of the economy has evaporated under customers’ gazes and left employees with a work experience that takes place in the public space of the service economy. Then, drawing inspiration from the political history of Western societies, it conveys the notion of bicameralism, the institutional innovation that spurred the process of democratization, into the government of the firm.

The point of democracy is to serve all; my proposal here is no exception. Lately, business rhetoric has become more and more imbued with the idea of corporate social and environmental responsibility, and with the questions of how to sustainably secure the innovation capacities of firms’ “human resources” while promoting efficiency and avoiding lack of motivation, depression, and, in extreme cases, job-related suicide. The proposal that follows is based on the pragmatic observation that the investment of labor in firms is at least as necessary and legitimate as the investment of capital, and that firms would be better served if all its investors were represented in their government. After all, as political history has shown, power sharing is preferable to confrontation, gridlock, or even collapse. Sharing, not relinquishing: to each set of investors its own house, bound to govern together in the interest of all through a representative government they both designate. A Capital Investors’ House of Representatives and a Labor Investors’ House of Representatives with an executive branch – or top management – whose laws must be consented by a majority in both houses; in other words, by at least 50% + 1 vote from the Representatives elected by Capital Investors and 50% + 1 vote from the Representatives elected by Labor Investors.

#### Using the prism of power instead of efficiency is part of a project of critical political economy in legal advocacy. This framework can displace the synthesis of law and economics.

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What might legal scholarship that took the political nature of the economy seriously look like? What questions would it foreground, and how would it address them? We offer a possible set of broad reorientations and questions, intended not as a last word but as invitation. They are constructed from our critique of the deficiencies of the Twentieth-Century Synthesis and in dialogue with developments across legal scholarship and grassroots movements.

A. From Efficiency to Power

By centering efficiency as a value and making key assumptions about markets and how they work, the Twentieth-Century Synthesis marginalized questions of power that had been central to legal analysis since at least the time of legal realism. Realists understood that the law generates the very order of rights that market advocates invoke to define the boundaries of "the economy." As they pointed out, when the state orders "private" rights it acts coercively, but in indirect fashion, allocating powers and immunities that authorize individuals to act on or with disregard for others.

Take as an example the thought of legal realist and institutional economist Robert Hale. Hale characterized economic life as a system of mutual coercion, with the degree of each person's coercive power arising directly from legal entitlements. "The law," Hale stressed, "confers on each person a wholly unique set of liberties with regard to the use of material goods and imposed on each person a unique set of restrictions with regard thereto."m2 Law, that is, allocates the powers and resources that are necessary to most human projects, thus defining the terrain on which people must work with others to fulfill their needs and pursue their purposes. Property law, for instance, tells you whom you must induce to give you access to what you need to meet your needs; conversely, it says which resources others can only access by winning your permission. This power to drive a (more or less hard) bargain was what Hale called coercion, and he saw it everywhere. For him, every bargain was conducted in the spirit of the strike and the lockout. (It is no coincidence that his was a theory of economic life for a time of fierce labor conflict.)

This account centers the power, rooted in state decisions and articulated through law, that constitutes the field of economic life. The Twentieth-Century Synthesis held that such power was unimportant, either by redirecting attention from it or by denying that power was stratified or structured in ways that matter. By refocusing scholarship on questions structured by transaction costs and externalities, law-and-economics analysis placed questions of distribution and coercion outside the lamplight of methodology. It thus neglected the actual social world comprised of highly disparate resource allocations that are themselves products of background legal rules: the power of the venture capitalist to bring to life or quash the plans of others; the trust beneficiary's option to refuse unwelcome offers in favor of idleness; and the acute need of the person living without any savings (as forty percent of Americans do) to find and accept an unequal bargain in order to stay alive.123 As important were a host of assumptions about markets and market subjects. Markets were typically presumed to be sufficiently competitive that concentrated power generally could not last. 124 Some suggested that politics might "clear" as markets did, so that when wealth was reallocated, when, for example, a new legal rule took from one side and gave to the other, it would be transferred back via a seamlessly adjusting market of politics.12 Under the pressure of these various conceptual moves, legal thought was effectively disabled from centering questions about power and distribution that would once obviously have been its main concerns. Who gives the orders, who dictates the plans, and who must aim to win a place as a cog in someone else's scheme? Who takes profits, who takes wages, and whose wages make for a secure life versus a precarious one? When the questions are posed in this way, it becomes clear that in the economists' standard definition of their subject matter, "choice under constraint," the emphasis should fall soundly on "constraint" and its legally constituted allocation. The study of that constraint, what Hale called the ubiquitous mutual coercion of economic relations on the basis of (almost always unequal) bargaining power, is the question that should replace the focus on the feasibility and comprehensiveness of bargains and the sum of economic activity that they make up.

What would it mean to take power once more as a central unit of analysis in law? In the broadest sense, when we teach a canonical case or encounter a legal problem, we might ask quite simply, who has power here, who should have power, and why? At least three forms of power deserve our attention: the constitutive power of law to create endowments that shape all voluntary bargains, the market power that legal structures enable, and the political power that may arise from differential endowments, market power, or ways that legal rules insulate economic power from democratic reordering. In selecting topics and framing questions, this reorientation would inquire into how law creates, reproduces, and protects political-economic power, for whom, and with what results.

Regarding constitutive power, an LPE reorientation would mean less attention to Coasean problems and what we might call (following the lead of economic sociologists) the "social geometry of bargains."126 Whom does law endow with bargaining power, and with what justification? How, if we aspired to more egalitarian distribution of power and resources, might law reconfigure these endowments- through both redistribution and "predistribution"? This way of reasoning would also invite attention to the history of state creation of systemically unequal endowments and to how legal regimes and lawyers by coding resources as capital have contributed to stratification and patterned disadvantage. 12 7 For example, we might, as some scholars of law and political economy already have, map the relations between techniques to render land a source of credit and the historical dispossession of native lands, 128 or rules of finance, property, and inheritance that have systematically undermined both black wealth and black land ownership in recent years. 2 9 Insofar as property and contract law serve as first-year allegories for economic life in general, our reorientation would also-in conjunction with attention to market and political power - redirect the pedagogical spirit of "private law" courses toward examining inequality and encasement of private power in markets as an ongoing product of law. The same reorientation would mean asking in other "economic" courses how law patterns the landscape of bargaining power: how antitrust law, for instance, has produced - but might instead restrict -new forms of enhanced bargaining power for firms, or how shifts in labor law have reduced labor's endowments but correspondingly might be revised to generate more meaningful countervailing power and negotiation over workplace governance.130

Market power, too, requires attention from a political-economy perspective. Economic power cannot be reduced to market power, as our discussions of constitutive and political power indicate. But in the presence of market power - the ability to dictate prices and the terms of market transactions due to one's dominant position as a buyer or seller - allocating decisions to markets will generate significant problems both within a conventional economic framework and beyond it. For example, where employers have pervasive monopsony power, we can expect implications for wages and working conditions that lend credence to new arguments for antitrust intervention, employment regulation, and the affirmative support of labor as countervailing power.131 Notably, a new wave of scholarship in economics argues that market power is today a pervasive rather than occasional phenomenon.132

Finally, to do justice to the conjunction that is political economy, we must also ask when and how economic power relates to political power. Political-science literature has begun to document the influence of wealth on legislation.133 We should ask about the means by which economic power translates into political power and how law structures, or could restructure, these channels of influence. 134 Of special importance here are measures that encase market power from politics, disabling ordinary democratic means of defining the place of markets in our political order. For example, investigations of where and how property or markets receive constitutional protection, as well as the limits of such regimes and their potential for reinterpretation, deserve to be central subjects of political economy.13

In a broader frame, the move to political economy requires a shift in our view of interpersonal relations - not as presumptively equal market transactions that are further legitimated by being voluntary and theoretically "making everyone better off' but rather as fundamentally power-laden bargains that require law and policy to be rendered more equal and fair. It also requires a shift in our view of inclusion from the individual to the structural level, looking not just at individualized experience but rather at how law and policy construct systematic forms of hierarchy and domination through a market that is always embedded in social relations. This is one of the key insights of critical legal thought and literature from both feminists and scholars of critical race theory. 136 Then, we may ask: how might public power be reconstituted where the market has been insulated from democratic control? Which legal tools are required? What is the proper relationship between expertise and democratic authority, and how can that be institutionalized? How might one reenvision the process of democratizing control over the economy, while recognizing the harms that governments have done - always to some more than others -in the name of the people?

#### Developing a new legal imaginary that center issues of power is necessary to displace the institutional and ideological power of the law and economics synthesis. A positive program helps us link together different areas of power inequalities in the law.

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In synthesizing these last two points, we might say that two criteria define a properly democratic political economy. First, the political community must be able to assert its collective will over the economic order, not be blocked from doing so by the antipolitics of efficiency-focused adjudication or technocracy. Second, the substance of economic life must support democratic self-rule by ensuring substantial equality, freedom from abjection and dependence, a workplace experience of dignity and self-assertion rather than vulnerability and humiliation, and the capacity to build power through institutions such as unions. A democratic political economy must be answerable to its citizens' rule, and it must produce citizens capable of ruling it.

Third, a commitment to democracy demands that we experiment with alternatives to the prevailing technologies of elite governance, particularly in the regulatory state itself. Instead of viewing state bureaucracy as a domain of apolitical expertise (or of malevolent capture and corruption), we might reconceive regulatory bodies as sites of democratic contestation.162 If purportedly neutral and technocratic visions for rationalizing governance are neither neutral nor, in practice, rationalizing, we need new conceptions of how to democratically discipline administrative decisions. What would processes of administrative accountability look like if they were wise to dynamics of power and animated by a commitment to more genuine equality? There is a dynamic scholarly agenda here, already under construction. We might explore, for example, means to bring representatives of affected communities to participate in administrative decision-making, aiming at modalities of democratic voice that could meet our needs for both (a broadened conception) of expertise and for institutionalized forms of countervailing power.163 There is a rich history of social movements engaging and seeking to remake the regulatory state in a more inclusive, but still effective, way.164 A democratic political economy compels us to revisit and build on this tradition. Like many of the cases we have advanced here, the substance of these arguments lies in political morality. A democratic political economy is a moral project, aimed at taking with full seriousness the equality of persons and our capacity to set for ourselves the terms of our collective lives, to decide how to deal out power and vulnerability, to figure out how to live together - and to defend these decisions to one another. When we follow Karl Polanyi in speaking of an economy "embedded" in society,165 we mean not just that economic ordering is always derived from legal ordering but also that an economy's ordering of power and vulnerability always bespeaks a moral vision of persons, whether egalitarian and generous or hierarchical and cramped.

Thus, scholarship should consider what moral images of social and political order are implied in a given legal patterning. What image of economic citizenship, or of a democratic economy, is embedded in a Brandeisian antitrust regime or in a labor law that assumes workers are involved in governing the workplace? In what ways is democracy or political membership hollowed out when replaced by the increasingly libertarian and wealth-maximizing premises of the Synthesis? Do "private-law" regimes here constitute citizens as market subjects who could demand a different kind of equality in these domains? What is revealed about the racialization of political membership by racial patterns of property ownership and loss, about gendered citizenship by the ways that the burdens of social reproduction interact with the wage bargain?166 Once the legal constitution of the economy is taken to be centrally about the production and enforcement of inequality, these questions present themselves naturally.

CONCLUSION

The Twentieth-Century Synthesis was a successful remaking of the legal imagination, creating a neoliberal political economy premised on concepts of efficiency, neutrality, and antipolitics. But even as this was a successful intellectual shift, manifesting in a wide range of scholarly discourses, doctrinal areas, and policy changes, it has always been a fragile configuration. As the contradictions of an increasingly unequal political economy have become painfully visible and exacerbated, the veneer of consensus around this Synthesis has fallen away. Thus, we find ourselves in a moment of political crisis and accompanying intellectual upheaval: an old order of political economy and its legitimating concepts are crumbling, but a new order has yet to emerge. The outlines of the battle for a new order have come into focus. The populisms of the far right, resurgent across the globe, point to one dark path coming out of this moment: the resurgence of reactionary political economy that marries anger at economic and political corruption with exclusionary attachment to racialized and gendered hierarchy. At the same time, centrist calls for a restoration of an imagined pre-2016 consensus on norms of good governance ignore the deeper causes of neoliberalism's crisis. But in contrast to both of these visions, the account offered here points to the beginnings of a very different, more deeply democratic and progressive political economy.

To embrace the possibility of democratic renewal requires rejecting the terms of the Twentieth-Century Synthesis. We believe that the legal realists-and thinkers in a much longer history of political thought-were right in believing that "the economy" is neither self-defining nor self-justifying. The emphasis in these traditions has been the right one: on power, distribution, and the need for legitimacy as the central themes in the organization of economic life. Moreover, precisely because economic ordering is a political and legal artifact, the idea of an "autonomous" economic domain has always been obscurantist and ideological, even when accepted in good faith. 167

Law does not and never could simply defer to such a realm. Rather, law is perennially involved in creating and enforcing the terms of economic ordering, most particularly through the creation and maintenance of markets. One of its most important roles, indeed, is determining who is subject to market ordering and on what terms and who is exempted in favor of other kinds of protection or provision. 168 Thus the program of law, politics, and institution building often called "neoliberalism" is, and can only be, a specific theory of how to use state power, to what ends, and for whose benefit. 169 The ideological work of the Twentieth-Century Synthesis has been to naturalize and embed in legal institutions from the Supreme Court to the Antitrust Office and World Trade Organization a specific disposition of power**.** This power represents a deployment of market ordering that produces intense and cross-cutting forms of inequality and democratic erosion. However, Twentieth-Century Synthesis theorists tend not to see this, precisely because the Synthesis makes it so hard to see (or at least so easy to overlook).

If it is to succeed, law and political economy will also require something beyond mere critique. It will require a positive agenda. Many new and energized voices, from the legal academy to political candidates to movement activists, are already building in this direction,170 calling for and giving shape to programs for more genuine democracy that also takes seriously questions of economic power and racial subordination;1 7 1 more equal distribution of resources and life chances;172 more public and shared resources and infrastructures; 73 the displacement of concentrated corporate power and rooting of new forms of worker power;174 the end of mass incarceration and broader contestation of the long history of the criminalization and control of poor people and people of color in building capitalism; 175 the recognition of finance and money as public infrastructures; 176 the challenges posed by emerging forms of power and control arising from new technologies;177 and the need for a radical new emphasis on ecology. 178 These are the materials from which a positive agenda, over time, will be built.

Political fights interact generatively with scholarly and policy debates in pointing the way toward a more democratic political economy. The emergence of new grassroots movements, campaigns, and proposals seeking to deepen our democracy is no guarantee of success. But their prevalence and influence make clear the dangers and opportunities of this moment of upheaval- and highlight the stakes of building a new legal imaginary.1 7 9 Neoliberal political economy, with its underlying commitments to efficiency, neutrality, and antipolitics, helped animate, shape, and legitimate a twentieth-century consensus that erased power, encased the market, and reinscribed racialized, economic, and gendered inequities. By contrast, a legal imaginary of democratic political economy, that takes seriously underlying concepts of power, equality, and democracy, can inform a wave of legal thought whose critique and policy imagination can amplify and accelerate these movements for structural reform- and, if we are lucky, help remake our polity in more deeply democratic ways. 175.

#### Legal realists see law as one arena of struggle. We all have the opportunity to take up the tools in the fight against the new Lochnerism of law and economics. Claiming the power to interpret the law connects scholarship with a publicly articulated vision for a new economic order.

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The politics of today’s post-financial-crisis era echo the concerns of the post-Gilded Age, pre-New Deal period, with the confluence of increasing economic inequality and dislocation; new forms of concentrated corporate power; a hostile Supreme Court; and a political system marked more by its dysfunction and corruption than its ability to redress these problems. Indeed, the problem of American politics today is not just one of income inequality. A growing body of empirical research highlights the toxic feedback loops between economic and social inequality on the one hand, and political inequality on the other.10 The decline of the countervailing power of unions and community-based organizations, coupled with the increased social and economic ties between policymakers and economic elites, contributes to a skewed political system, which in turn produces policies that favor elites and further exacerbate inequality.11 The citizens and communities most harmed by the modern economy are thus also increasingly unable to leverage political power to change the policies that drive those inequities.

The Supreme Court is, in one sense, an obvious front line for the battle to redress problems of economic and political inequality. To the extent that the Court’s constitutional interpretation magnifies disparities of political and economic power, it seems logical to target these decisions specifically. But the challenge of economic and political inequality today goes beyond Supreme Court doctrine and constitutional text. The charge of neo- Lochnerism on the Roberts Court opens up an important debate but leaves two critical questions unaddressed. First, what is the substantive content of an alternative, more democratic and egalitarian vision of political economy to counteract the underlying values and judgments apparent in these headline cases? And second, what is a theory of change through which this alternative can be made real, and to what extent does this project necessarily have to involve the Court at all?

This Paper addresses these questions by drawing on the political and legal thought emerging from the critique of Lochner-era political economy. During the Progressive Era, the battle against the intellectual edifice that lay behind Lochner—ideas of laissez-faire constitutionalism and political economy, which emphasized the ideal of market-based equality and expressed a hostility towards various attempts at economic regulation— catalyzed an explosion of scholarship and reform activism among a cohort of lawyers, economists, philosophers, and activists. In the legal academy, we are most familiar with the legal realist movement which emerged during this time critiquing the kind of judicial power expressed in Lochner while revealing the realities of ideology and politics operating beneath the veneer of neutral, formalist legal reasoning on the courts. This intellectual movement would go on to become a foundational shift in legal thought and scholarship going forward. But legal realism was part of a broader intellectual ecology that produced more than just this critique of judicial behavior. Within this ecology of debate, there existed a strand of more radical critique and reform politics that offers important insights for our own normative and institutional challenges today.

Drawing from Progressive Era political thought, this Paper makes three arguments. First, by taking its cue from the critiques developed by Progressive Era and legal realist thinkers, this Paper offers a normative framework for understanding the problems of economic inequality. The problem, I will argue, is not just about income inequality; rather it is a deeper problem of what we can understand as domination—the accumulation of unchecked, arbitrary economic or political power over others. Just as Progressive Era thinkers saw the problem of industrialization as one of concentrated economic and political power—of domination—so too can we understand the challenges of the postcrisis economy in similar moral terms. If the root problem is one of disparate power then the remedy lies in rebalancing the terms of economic and political power. This in turn suggests that the moral problem of domination requires a counteracting defense of the moral value of democracy, of the capacity for we the people to hold such exercises of economic and political power accountable through collective political action.

By placing legal realism in its political-economic context of reformers and thinkers struggling with the upheavals and inequities of industrialization, this argument also offers an important reinterpretation of legal realism as more than just a critique of judicial formalism, and instead as part of a larger effort to imagine a more egalitarian and democratic political economy. By “political economy” I mean to evoke a moral and institutional conception of how our politics and economics relate to one another, how they are structured by law and institutions, and how they ought to be structured in light of fundamental moral values. The political economy of the Roberts Court, like that of the Lochner era, evinces a particular view of markets and politics that exacerbates underlying inequities of power. In contrast, this Progressive Era-inspired view suggests an alternative account of democratic political economy. Second, I argue that this vision of democratic political economy also suggests a particular theory of social change. The moral focus on domination and democracy orients us towards reform strategies that look to the ways in which law structures economic and political processes to allocate power, capabilities, and opportunities. These underlying structures emerge as critical sites of contestation, reform, and change. Thus, we might shift the terms of economic power through legislative and regulatory moves like antitrust and public utility; and we may magnify the democratic political power of citizens by creating alternative vehicles for voice and participation at the national or local level.

Third, this vision of social change in turn suggests a very different reading of the role of constitutionalism and constitutional theory in political-economic debates. The Progressive Era thinkers discussed below were, for the most part, rabidly hostile to courts and judges. While we may not adopt the full extent of their antijudicial stance, it is nevertheless instructive for considering the role of law and constitutionalism in today’s debates over inequality and domination. I will argue below that the kind of constitutionalism we can glean from these thinkers is not the “big-C” Constitutionalism of Supreme Court doctrine, precedent, or textual interpretation. This mode of constitutionalism is indeed important, but ultimately it is responsive to longer-term trends in ideas, values, and granular, accumulated policy changes on the ground. Rather, I suggest we turn to a different, “small-c” notion of constitutionalism. This is the constitutionalism of social movements, of public philosophy**,** and of the laws and regulations that literally constitute our politics and our economics. Constitutional political economy, on this view, is the concern not just of courts but of we the people. And its primary tools for change are not just judicial decisions, but legislative, regulatory, and other forms of ordinary governance. These changes need not be small-scale or incremental; indeed they can be structural and far-reaching. But they fundamentally operate through different channels of governance outside the courts.

In so doing, this Paper offers an account of constitutionalism and social change that, on the one hand, deliberately diminishes the import of the “high politics” of constitutional theory and Court doctrine, while on the other hand, evaluates the stature and importance and moral stakes of the “vernacular politics” of regulation, legislation, movement organizing and advocacy, and day-to-day governance. Indeed, just as the legal realist movement emerged out of the political and economic pressures of the first Gilded Age, our current era of economic and political inequality, a New Gilded Age of its own, is helping drive a similar explosion of dynamic and rich legal scholarship that, from different subfields and through different methodologies, revolves around these core concerns of how law and institutions construct our modern economic, political, and social life; how they shape inequities in those arenas; and how central movements, legislation, and regulation are developing a response. This “fourth wave” of legal realism is an important development that can help deepen the diagnosis and reform agenda for a more democratic political economy—one that draws not only on the moral and structural force of constitutional theory, but also is oriented towards the concrete and granular impact of law as it functions in economic, regulatory, and other forms of governance.

#### Public/private dichotomy constructs the world in neoclassical terms. Starting with public value creation challenges the vision of the private sector as the source of value.

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2. FROM MARKET FAILURE TO MARKET SHAPING

The dominant approach to public policy is derived from neoclassical economic theory, in particular microeconomic theory and welfare economics. This approach 4 emphasizes the idea that, given certain assumptions, individuals pursuing their own self-interest in competitive markets gives rise to the most efficient outcomes (Samuelson, 1947; Mas-Colell et al., 1995: 539‒40). Efficiency is understood in a utilitarian sense, whereby an activity is efficient if it enhances someone’s welfare without making anyone else worse off (so-called Pareto efficiency). Under these conditions, the role of government intervention is in practice often limited to addressing instances where the market is unable to deliver Pareto-efficient outcomes.

These ‘market failures’ arise when there are information asymmetries, transaction costs and frictions to smooth exchange, non-competitive markets (e.g. monopolies) or externalities whereby an activity harms another agent not directly connected with the market transaction (e.g. pollution), or coordination and information failures hamper investment (Rodrik, 1996). In the 1960s, public-choice theory considered how the actions of agents (voters, bureaucrats, politicians) involved in policy could be considered from an economic efficiency perspective, as those agents, including government agents, were assumed to be self-interested (Buchanan and Tullock, 1964). While in markets the existence of competition and the profit motive tends to enforce efficient decision-making, in collective decision-making processes (i.e. politics and public administration) the same disciplining framework does not exist. Policymaking is thus subject to capture by certain interest groups, in particular those most able to influence policymakers for reasons of power or money. In public administration, the lack of competitive pressures leads to ‘bureau-maximizing’ behaviour, whereby departments and agencies look after their own survival rather than the ‘common good’.

Public-choice theory argues that even where there are clear examples of market failure, it is not always the case that government intervention would result in a more efficient outcome. Rather, there could also be ‘government failure’, whereby decisions aimed at improving welfare make things even worse than they would have been under conditions of market failure (Le Grand, 1991). For policymaking processes such an approach creates a bias towards inaction. If the default assumption is that the market will find the best outcome, even if it doesn’t the overriding concern is that government intervention may worsen existing outcomes; the default prescription for government policy is to maintain the status quo. There is a danger that analytical frameworks become focused more on justifying and measuring the non-failure of public policies than on the attainment of wider policy goals.

In development theory and practice, the market-failure-based approaches coalesced in the 1990s around the so-called Washington Consensus policies focused on deregulation, opening up domestic markets, and relying on foreign direct investments and exports to drive economic transition and growth (Williamson, 2002). The Washington Consensus main assumption was that as all development problems are of the same nature, the solutions are bound to be the same as well. This removes the question of directionality of growth away from domestic policymaking and leaves global markets in charge (Kattel et al., 2016). The market failure perspective also creates a particular orientation towards innovation, industrial policy, and structural economic change. While certain 5 elements of innovation policy, in particular early-stage R&D, can be considered to be public goods and thus a case for public policy provision can be justified, in the main it is assumed that the private sector is the more efficient innovator, possessing greater entrepreneurial capacity and better able to take risks given the pressure created by competition. In contrast, the state is viewed as risk averse and in danger of creating government failure if it becomes too involved in industrial policy by ‘picking winners’. Its role is to level the playing field for commercial actors— mostly through supply-side inputs such as better skills or the removal of market frictions— and then get out of the way. This has led to rather diverse debates and the development of policy practices aimed at finding ever more precise policy targets through better measurement of failures and of the impact of policies trying to fix those failures. Instead, policy discussions in particular should focus on ‘heterodox’ policy approaches that recognize both market and government imperfections and failures—as well as the fact that it is impossible or even undesirable to attempt to remove all of them at once—and the need for policies that support scale economies, dynamic learning effects, and cross-sectoral spillovers (Rodrik, 2009).

In order to expand such heterodox notions to grand challenges, we need a positive theory of public valuethat begins with a notion of the public good not as a correction to a failure, but as an objective in itself—an objective that can only come about if linked to a process through which value is created. In this sense a new building block is needed to guide and legitimize public policy. As indicated by Kenneth Arrow (1962), while a market failure approach can be utilized to understand why, for example, private firms underinvest in R&D, it is not so useful for guiding public investment in R&D, because of the inherent uncertainty involved in the outcomes of such investment. Indeed, Arrow called for alternative approaches to analysing public investment and policies for innovation.

Critically, the market-failure justification implies that pure private markets/private goods can exist independently of public or collective action. While the role of institutions is admitted (North, 1991), the role of different voices coming together to form the notion of the public itself is left mainly to sociology, not economics. Nelson notes that ‘there is no satisfactory normative theory regarding the appropriate roles of government in a mixed economy’ (1987: 556) and no theory that captures the complex variety of institutional arrangements that people have developed to solve collective problems. Just as pure public goods are rare, so too are pure private goods. Babysitters or sharing everyday appliances such as lawnmowers involves no government intervention or regulations, but does involve collective or ‘public’ negotiation. Hence the ‘market failure’ dichotomy is not particularly useful.

We propose an alternative approach, which begins with the notion of public value as collectively generated by a range of stakeholders including the market, the state, and civil society. Key here is the emphasis on value creation at the core: not ‘public’ value but value itself—with a clear delineation of the role of the different actors that are central to its formation. While in economics value is, in essence, created inside businesses and only facilitated by the public sector, in this view value is co-created and requires a stakeholder understanding of capitalism itself. This view draws on the work of Elinor Ostrom (2005), who shows that a radical state/private division is, to use her word, barren. In developed economies there are many types of organizations. Non-partisan government regulators, statefunded universities, and state-run research projects, for example, are quite different. Besides, the crude binary state/private division fails to capture the many ways in which all institutions create and destroy value. In addition, Ostrom’s (1990) emphasis on pooled common resources and her interest in shaping systems so that they take into account collective behaviour, can help shape new policy tools.

This more collective view also benefits from a different understanding of the market itself, with the market as an outcome of the interactions of individuals, firms, and the state, as discussed in the work of Karl Polanyi (1957), and ‘embedded economies’, as discussed by Granovetter (1985). If value is created collectively, a first question becomes: what capabilities, resources, and capacities are needed for this value to be created inside all the different organizations, including those in the public sector, private sector, and civil society? In the same way that a theory of private value creation benefits from a resource-based theory of the firm (Penrose, 1959), so does a public-value notion. Indeed, it is by sidelining the notion of value as only created in business and facilitated or redistributed by the public sector that the question of capabilities is missed. The work by Teece (1990) on the dynamic capabilities of the firm becomes equally necessary for the public sector, as we have argued elsewhere (Kattel and Mazzucato, 2018).

A collective theory of value creation requires understanding by all actors of investment and production capacity. Indeed, as discussed by Mazzucato and Sekera (2019), a theory of public value needs to also understand the productive capacity and capabilities of the state. And if the state loses that capacity it will lose its absorptive capacity—and hence be unable to understand technological and market opportunities (Cohen and Levinthal, 1990).

#### Liberalism is not a monolith – retrieving it for a radical democratic agenda challenges unjust hierarchies of domination.

Charles W. **MILLS** Professor of Philosophy @ CUNY **’12** “Occupy Liberalism,” Chapter 2 in *Black Rights/White Wrongs: The Critique of Racial Liberalism* [h](https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780190245412.001.0001/acprof-9780190245412-chapter-2)

The “Occupy Wall Street!” movement stimulated a long listing of other candidates for radical “occupation.” This chapter proposes as a target for radical occupation the somewhat unusual candidate of liberalism itself. It argues for a constructive engagement of radicals with liberalism in order to retrieve it for a radical egalitarian agenda. The premise is that the foundational values of liberalism have a radical potential that has not historically been realized, given the way the dominant varieties of liberalism have developed. Ten reasons standardly given as to why such a retrieval cannot be carried out are examined and argued to be fallacious.

The “Occupy!” movement, which has made headlines around the country, has raised the hopes of young American radicals new to political engagement and revived the hopes of an older generation of radicals still clinging to nostalgic dreams of the glorious ’60s. If the original and still most salient target was Wall Street, a long list of other candidates for “occupation” has since been put forward. In this chapter, I want to propose as a target for radical occupation the somewhat unusual candidate of liberalism itself. But contrary to the conventional wisdom prevailing within radical circles, I am going to argue for the heretical thesis that liberalism should not be contemptuously rejected by radicals but retrieved for a radical agenda. Summarized in bullet-point form, my argument is as follows:

• The “Occupy Wall Street” movement provides an opportunity unprecedented in decades to build a broad democratic movement to challenge plutocracy, patriarchy, and white supremacy in the United States.

• Such a movement is more likely to be successful if it appeals to principles and values most Americans already endorse.

• Liberalism has always been the dominant ideology in the United States.

• Liberalism in the United States has historically been complicit with plutocracy, patriarchy, and white supremacy, but this complicity is a contingent function of dominant group interests rather than the result of an immanent conceptual logic.

• Therefore, progressives in philosophy (and elsewhere) should try to retrieve liberalism for a radical democratic agenda rather than rejecting it, thereby positioning themselves in the ideological mainstream of the country and seeking its transformation.

Let me now try to make this argument plausible for an audience likely to be aprioristically convinced of its obvious unsoundness.

Preliminary Clarification of Terms

First we need to clarify the key terms of “radicalism” and “liberalism.” While of course a radicalism of the right exists, here I refer to radicals who are progressives. But “progressive” cannot just denote the left of the political spectrum, since the whole point of the “new social movements” of the 1960s onward was that the traditional left-right political spectrum, predicated on varying positions on the question of public versus private ownership of the means of production, did not exhaust the topography of the political. Issues of gender and racial domination were to a significant extent “orthogonal” to this one-dimensional trope. So I will use “radicalism” broadly, though still in the zone of progressive politics, to refer generally to ideas/concepts/principles/values endorsing pro-egalitarian structural change to reduce or eliminate unjust hierarchies of domination.

“Liberalism” may denote both a political philosophy and the institutions and practices characteristically tied to that political philosophy. My focus will be on the former. The issue of how bureaucratic logics may prove refractory to reformist agendas is undeniably an important one, but it does not really fall into the purview of philosophy proper. My aim is to challenge the radical shibboleth that radical ideas/concepts/principles/values are incompatible with liberalism. Given the deep entrenchment of this assumption in the worldview of most radicals, refuting it would still be an accomplishment, even if working out practical details of operationalization are delegated to other hands.

In the United States, of course, “liberalism” in public parlance and everyday political discourse is used in such a way that it really denotes left-liberalism specifically (“left” by the standards of a country whose political center of gravity has shifted right in recent decades). In this vocabulary, right-liberals are then categorized as “conservatives”—in the market sense, as against the Burkean sense. On the other hand, some on the right would insist that only they, the heirs to the classic liberalism of John Locke and Adam Smith, are really entitled to the “liberal” designation. Later welfarist theorists are fraudulent pretenders to be exposed as socialist intruders unworthy of the title. Rejecting both of these usages, I will be employing “liberalism” in the expanded sense typical of political philosophy, which links both ends of this spectrum. “Liberalism” then refers broadly to the (p.12) anti-feudal ideology of individualism, equal rights, and moral egalitarianism that arises in Western Europe in the seventeenth-eighteenth centuries to challenge the ideas and values inherited from the old medieval order, and which is subsequently taken up and developed by others elsewhere, including many who would have been explicitly excluded by the original conception of the ideology. Left-wing social democrats and right-wing market conservatives, fans of John Rawls on the one hand and Robert Nozick on the other, are thus both liberals.1

From this perspective, it will be appreciated that liberalism is not a monolith but an umbrella term for a variety of positions. Here are some examples—some familiar, some perhaps less so:

Varieties of Liberalism

Left-wing (social democratic) vs. Right-wing (market conservative)

Kantian vs. Lockean

Contractarian vs. Utilitarian

Corporate vs. Democratic

Social vs. Individualist

Comprehensive vs. Political

Ideal-theory vs. Non-ideal-theory

Patriarchal vs. Feminist

Imperial vs. Anti-imperial

Racial vs. Anti-racial

Color-blind vs. Color-conscious

Etc.2

It is not the case, of course, that these different species of liberalism have been equally represented in the ideational sphere or equally implemented in the institutional sphere. On the contrary, some have been dominant while others have been subordinate, and some have never, at least in the full sense, been implemented at all. But nonetheless, I suggest they all count as liberalisms and as such they are all supposed to have certain elements in common, even those characterized by gender and racial exclusions. (My motivation for making these last varieties of liberalism rather than deviations from liberalism is precisely to challenge liberalism’s self-congratulatory history, which holds an idealized liberalism aloft, untainted by its actual record of complicity with oppressive social systems.) So the initial question we should always ask people making generalizations about “liberalism” is this: What particular variety of liberalism do you mean? And are your generalizations really true about all the possible kinds of liberalism, or only a subset? (p.13)

Here is a characterization of liberalism from a very respectable source, the British political theorist, John Gray:

Common to all variants of the liberal tradition is a definite conception, distinctively modern in character, of man and society… . It is individualist, in that it asserts the moral primacy of the person against the claims of any social collectivity; egalitarian, inasmuch as it confers on all men the same moral status and denies the relevance to legal or political order of differences in moral worth among human beings; universalist, affirming the moral unity of the human species and according a secondary importance to specific historic associations and cultural forms; and meliorist in its affirmation of the corrigibility and improvability of all social institutions and political arrangements. It is this conception of man and society which gives liberalism a definite identity which transcends its vast internal variety and complexity.3

What generate the different varieties of liberalism are different concepts of individualism, different claims about how egalitarianism should be construed or realized, more or less inclusionary readings of universalism (Gray’s characterization sanitizes liberalism’s actual sexist and racist history), different views of what count as desirable improvements, conflicting normative balancings of liberal values (freedom, equality) and competing theoretical prognoses about how best they can be realized in the light of (contested) socio-historical facts. The huge potential for disagreement about all of these explains how a common liberal core can produce such a wide range of variants. Moreover, we need to take into account not merely the spectrum of actual liberalisms but also hypothetical liberalisms that could be generated through novel framings of some or all of the above. So one would need to differentiate dominant versions of liberalism from oppositional versions, and actual from possible variants.

Once the breadth of the range of liberalisms is appreciated—dominant and subordinate, actual and potential—the obvious question then raised is this: even if actual dominant liberalisms have been conservative in various ways (corporate, patriarchal, racist) why does this rule out the development of emancipatory, radical liberalisms?

One kind of answer is the following (call this the internalist answer): because there is an immanent conceptual/normative logic to liberalism as a political ideology that precludes any emancipatory development of it.

Another kind of answer is the following (call this the externalist answer): it doesn’t. The historic domination of conservative exclusionary liberalisms is the result of group interests, group power, and successful group political projects. Apparent internal conceptual/normative barriers to an emancipatory liberalism can be successfully negotiated by drawing (p.14) on the conceptual/normative resources of liberalism itself, in conjunction with a revisionist socio-historical picture of modernity.

Most self-described radicals would endorse—indeed, reflexively, as an obvious truth—the first answer. But as indicated from the beginning, I think the second answer is actually the correct one. The obstacles to developing a “radical liberalism” are, in my opinion, primarily externalist in nature: material group interests, and the way they have shaped hegemonic varieties of liberalism. So I think we need to try to justify a radical agenda with the normative resources of liberalism rather than writing off liberalism. Since liberalism has always been the dominant ideology in the United States and is now globally hegemonic, such a project would have the great ideological advantage of appealing to values and principles that most people already endorse. All projects of egalitarian social transformation are going to face a combination of material, political, and ideological obstacles, but this strategy would at least reduce somewhat the dimensions of the last. One would be trying to win mass support for policies that—and the challenge will, of course, be to demonstrate this—are justifiable by majoritarian norms, once reconceived and put in conjunction with facts not always familiar to the majority. Material barriers (vested group interests) and political barriers (organizational difficulties) will of course remain. But they will constitute a general obstacle for all egalitarian political programs, and as such cannot be claimed to be peculiar problems for an emancipatory liberalism.

But the contention will be that such a liberalism cannot be developed. Why? Here are ten familiar objections, variants of internalism, and my replies to them.

Ten Reasons Why Liberalism Cannot Be Radicalized (And My Replies)

1. Liberalism Has an Asocial, Atomic Individualist Ontology

This is one of the oldest radical critiques of liberalism; it can be found in Marx’s derisive comments—for example, in the Grundrisse—about the “Robinsonades” of the social contract theory whose “golden age” (1650–1800) had long passed by the time he began his intellectual and political career:

The individual and isolated hunter or fisher who forms the starting-point with Smith and Ricardo belongs to the insipid illusions of the eighteenth century. They are Robinson Crusoe stories … no more based on such a naturalism than is Rousseau’s contrat social which makes naturally independent individuals come in contact and have (p.15) mutual intercourse by contract… . Man is in the most literal sense of the word a zoon politikon, not only a social animal, but an animal which can develop into an individual only in society. Production by individuals outside society … is as great an absurdity as the idea of the development of language without individuals living together and talking to one another.4

But several replies can be made to this indictment. To begin with, even if the accusation is true of contractarian liberalism, not all liberalisms are contractarian. Utilitarian liberalism rests on different theoretical foundations, as does the late nineteenth-century British liberalism of T. H. Green and his colleagues: a Hegelian, social liberalism.5 Closer to home, of course, we have John Dewey’s brand of liberalism. Moreover, even within the social contract tradition, resources exist for contesting the assumptions of the Hobbesian/Lockean version of the contract. Rousseau’s Discourse on the Origins of Inequality (1755) (nowhere cited by Marx) rethinks the “contract” to make it a contract entered into after the formation of society, and thus the creation of socialized human beings. So the ontology presupposed is explicitly a social one. In any case, the contemporary revival of contractarianism initiated by John Rawls’s 1971 A Theory of Justice makes the contract a thought-experiment, a “device of representation,” rather than a literal or even metaphorical anthropological account.6 The communitarian/contractarian debates of the 1980s onward recapitulated much of the “asocial” critique of contractarian liberalism (though usually without a radical edge). But as Rawls pointed out against Michael Sandel, for example, one needs to distinguish the figures in the thought-experiment from real human beings.7 And radicals should be wary about accepting a communitarian ontology and claims about the general good that deny or marginalize the dynamics of group domination in actual societies represented as “communities.” The great virtue of contractarian liberal individualism is the conceptual room it provides for hegemonic norms to be critically evaluated through the epistemic and moral distancing from Sittlichkeit that the contract, as an intellectual device, provides.

2. Liberalism Cannot Recognize Groups and Group Oppression in Its Ontology—I (Macro)

The second point needs to be logically distinguished from the first, since a theory could acknowledge the social shaping of individuals while denying that group oppression is central to that shaping. (So #1 is necessary, but not sufficient, for #2.) The Marxist critique, of course, was supposed to encapsulate both points: people were shaped by society and society (post-“primitive (p.16) communism”) was class dominated. The ontology was social and it was an ontology of class. Today radicals would demand a richer ontology that can accommodate the realities of gender and racial oppression also. But whatever candidates are put forward, the key claim is that a liberal framework cannot accommodate an ontology of groups in relations of domination and subordination. To the extent that liberalism recognizes social groups, these are basically conceived of as voluntary associations that one chooses to join or not join, which is obviously very different from, say, class, race, and gender memberships.

But this evasive ontology, which obfuscates the most central and obvious fact about all societies since humanity exited the hunting-and-gathering stage—that is, that they are characterized by oppressions of one kind or another—is not a definitional constituent of liberalism. Liberalism has certainly recognized some kinds of oppression: the absolutism it opposed from the seventeenth to the nineteenth century, the Nazism and Stalinism it opposed in the twentieth century. Liberalism’s failure to systematically address structural oppression in supposedly liberal-democratic societies is a contingent artifact of the group perspectives and group interests privileged by those structures, not an intrinsic feature of liberalism’s conceptual apparatus.

In the preface to her recent Analyzing Oppression, Ann Cudd makes a striking point: that hers is the first book-length treatment of the subject in the analytic tradition.8 Philosophy, the discipline whose special mandate it is to illuminate justice and injustice for us, has had very little to say about injustice and oppression because of the social background of the majority of its thinkers. In political theory and political philosophy, the theorists who developed the dominant varieties of liberalism have come overwhelmingly from the hegemonic groups of the liberal social order (bourgeois white males). So it is really not surprising that, given this background, their socio-political and epistemic standpoint has tended to reproduce rather than challenge group privilege.

Consider Rawls, famously weak on gender and with next to nothing to say about race. Rawlsian “ideal theory,” which has dominated mainstream political philosophy for the last four decades, marginalizes such concerns not contingently but structurally. If your focus from the start is principles of distributive justice for a “well-ordered society,” then social oppression cannot be part of the picture, since by definition an oppressive society is not a well-ordered one. As Cudd points out, A Theory of Justice “leaves injustice virtually untheorized,” operating on the assumption “that injustice is merely the negation of justice.”9 But radically unjust societies—those characterized by major rather than minor deviations from ideality—will be different from just societies not merely morally but (p.17) also metaphysically. What Cudd calls “nonvoluntary social groups” will be central to their makeup.

Accordingly, Cudd contends that a conceptualization of “nonvoluntary social groups” must be central to any adequate account of social oppression: “without positing social groups as causally efficacious entities, we cannot explain oppression.” Contra the conventional wisdom in radical circles, however, she is insistent that the ontology of such groups can be explained “[using] current social science, in the form of cognitive psychology and modern economic theory, and situat[ing] itself in the Anglo-American tradition of liberal political philosophy.”10 Identifying “intentionalist” and “structuralist” approaches as the two broad categories of competing theorizations of social groups, she recommends as the best option a compatibilist position, holding that while all action is intentionally guided, many of the constraints within which we act are socially determined and beyond the control of the currently acting individual; to put a slogan on it, intentions dynamically interact within social structures… . My theory of nonvoluntary social groups fits the description of what Philip Pettit calls “holistic individualism,” which means that the social regularities associated with nonvoluntary social groups supervene on intentional states, and at the same time, group membership in these and voluntary social groups partly constitutes the intentional states of individuals.11

If Cudd is right, then, such a theorization can indeed be developed within a liberal framework, using the resources of analytic social and normative theory. But such a development of the theory is not merely permissible but should be seen as mandatory, given liberalism’s nominal commitment to individualism, egalitarianism, universalism, and meliorism. These values simply cannot be achieved unless the obstacles to their realization are identified and theorized. Social-democratic (left) liberalism, feminist liberalism, black liberalism all historically represent attempts to take these structural realities into account for the purposes of rethinking dominant liberalism.12 They are attempts to get right, to map accurately, the actual ontology of the societies for which liberalism is prescribing principles of justice. What Cudd’s book demonstrates is that it is the ignoring of this ontology of group domination that is the real betrayal of the liberal project. A well-ordered society will not have nonvoluntary social groups as part of its ontology. So the path to the “realistic utopia” Rawls is supposedly outlining would crucially require normative prescriptions for eliminating such groups. That no such guidelines are offered is undeniably an indictment of ideal-theory liberalism, which is thereby exposed as both epistemologically and ontologically inadequate. But that does not rule out a reconceptualized (p.18) liberalism, a non-ideal-theory liberalism that, starting from a different social metaphysic, requires a different normative strategy for theorizing justice.

3. Liberalism Cannot Recognize Groups and Group Oppression in Its Ontology—II (Micro)

But (it will be replied) liberalism suffers from a deeper theoretical inadequacy. Even if it may be conceded that liberal theory can recognize oppression at the macro-level, it will be argued that its individualism prevents it from recognizing how profoundly, at the micro-level, individuals are shaped by structures of social oppression. Class, race, and gender belongings penetrate deeply into the ontology of the individual in ways rendered opaque (it will be claimed) by liberalism’s foundational individualism.

But what those seeking to retrieve liberalism would point out is that we need to distinguish different senses of “individualism.” The individualism that is foundational to liberalism is a normative individualism (as in the Gray quote above), which makes individuals rather than social collectivities the locus of value. But that does not require any denial that individuals are shaped in their character (the “second nature” famously highlighted by left theory) by oppressive social forces and related group memberships. Once the first two criticisms have been refuted—that liberal individuals cannot be “social,” and that the involuntary group memberships central to the social in oppressive societies cannot be accommodated within a liberal framework—then this third criticism collapses also. One can without inconsistency affirm both the value of the individual and the importance of recognizing how the individual is socially molded, especially when the environing social structures are oppressive ones. As already noted, dominant liberalism tends to ignore or marginalize such constraints, assuming as its representative figures individuals not merely morally equal, but socially recognized as morally equal, and equi-powerful rather than group-differentiated into the privileged and the subordinated. But this misleading normative and descriptive picture is a function of a political agenda complicit with the status quo, not a necessary implication of liberalism’s core assumptions. A revisionist, radical liberalism would make the analysis of group oppression, the denial of equal standing to the majority of the population, and their impact on the individual’s ontology, a theoretical priority. Thus Cudd’s book, after explicating the ontology of involuntary groups, goes on to detail the various different ways—through violence, economic constraint, discrimination, group harassment, and the internalization of psychological oppression—that the subordinated are shaped by group domination.13 But nothing in her account is meant to imply either that they (p.19) thereby cease to be individuals or that their involuntary group memberships preclude a normative liberal condemnation of the injustice of their treatment.

4. Liberal Humanist Individualism Is Naïve about the Subject

A different kind of challenge is mounted by Foucault (though arguably originating in such earlier sources as the “anti-humanism” of Althusserian Marxism).14 Here, as John Christman points out, in contrast to the “thick” conception of the person advocated by communitarianism, in critique of liberalism, we get the theoretical recommendation that “the notion of a singular unified subject of any sort, however thin the conception, [must be] abandoned.”15 As Foucault writes:

How, under what conditions, and in what forms can something like a subject appear in the order of discourse? What place can it occupy in each type of discourse, what functions can it assume, and by obeying what rules? In short, it is a matter of depriving the subject (or its substitute) of its role as originator, and of analyzing the subject as a variable and complex function of discourse.16

The subject is not merely molded by power, but produced by power, and, in effect, vanishes.

I agree that liberalism cannot meet such a challenge, but I think the premise of the challenge should be rejected. Here I am in sympathy with Christman, who, reviewing various critiques of the classic liberal humanist conception of the self, argues for a socio-historical conception that concedes the absurdity of the notion of people springing from their own brow (“originators”) while nonetheless making a case for “degrees” of self-creation:

Selves should be seen as to a large extent formed by factors not under the control of those reflective agents themselves… . This will help accomplish two things: to provide grounds for the rejection of models of agency and citizenship that assume Herculean abilities to fashion ourselves out of whole cloth; and to force us to focus more carefully on what powers of self-shaping we therefore are left with… . The point must be that the role of the self’s control of the self (and the attendant social elements of both ‘selves’) will be circumscribed by the ways in which our lives are shaped for us and not by us.17

A commitment to humanism does not, as pointed out above, require the denial of the obvious fact that human beings—especially the (p.20) oppressed—are constrained by material structures and social restrictions in what they can accomplish, nor that, as products of particular epochs and group memberships, their consciousness will have been shaped by dominant concepts and norms. Marx emphasized long ago that though people make history, they do not make it under conditions of their own choosing, that agency is constrained by structure and circumstance. But, contra Althusser, this was never intended as a rejection of the claim that it is still people who ultimately assert their personhood in struggle.

And in my opinion, the retort applies to the Foucauldian version of the thesis also. To make the familiar left critiques: such an analysis not only deprives us of a normative basis for indicting structures of oppression, not only deprives the subject of agency, but is flagrantly inconsistent with the actual history of people’s resistance to the systems that have supposedly “produced” them as subjects. The anti-colonial struggle, the anti-Fascist and anti-Stalinist struggles, the civil rights struggles of white women, people of color, gays, the recent “Arab spring” all give the lie to such a diagnosis. Radical liberalism is capable of recognizing both the extent of our socialization by the existing oppressive social order and the ways in which, nonetheless, many people resist and struggle against this oppressive social order.

5. Liberalism’s Values (Independently of the Ontology Question) Are Themselves Problematic

Even if the ontological challenge can be beaten back, though, another front remains open. It will be argued that liberal humanist values are themselves problematic in nature and incapable of advancing a radical agenda. But the obvious reply is, Which values? And what exactly is the problem supposed to be: (a) that the values are intrinsically problematic? (b) that the values involved have historically been extended in an exclusionary discriminatory way? (c) that the values have been developed in a fashion that is predicated on the experience of the privileged? These are all different claims.

Start with the first. Admittedly, some values associated with the liberal tradition could be judged to be intrinsically problematic, such as the “possessive individualism” C. B. Macpherson famously attributed to Hobbes and Locke.18 But this is a value specific to right-wing liberalism, not liberalism in general (it does not appear on Gray’s list), and would be opposed by left-wing/social democratic liberalism. Such values as “freedom,” “equality” (moral egalitarianism), and “fraternity/sorority” classically emblematic of the liberal tradition have not usually been seen as problematic by radicals and have indeed been emblazoned on radical banners. Freedom from oppression, equal rights/equal pay/equal citizenship (“I AM A MAN”), (p.21) fraternity/sorority with the subordinated (“Am I not a man and a brother? Am I not a woman and a sister?”) have all served as values for progressive movements seeking social emancipation.

To be sure, it is a familiar point to radicals, if somewhat less so to the non-radical majority, that the population as a whole has not historically been recognized as deserving the protections of these norms, so that the opponents of emancipation have all too often themselves been liberals. Freedom has been construed as justifiably resting on the enslavement of some; equality has been restricted to those deemed worthy of it (i.e., those more equal than others); fraternity has been literal, an all-boys’ club. Domenico Losurdo’s recently translated Liberalism: A Counter-History provides a devastating exposé of “liberal thought [not] in its abstract purity, but liberalism, and hence the liberal movement and liberal society, in their concrete reality.” It is an illuminatingly sordid history of the ideology’s complicity with racial slavery, white working-class indentureship, colonialism and imperialism (“A ‘Master-Race Democracy’ on a Planetary Scale,” in one chapter’s title), and the conceptual connection between the Nazi “final solution” and Europe’s earlier extermination programs against indigenous peoples.19

Yet it is noteworthy that in his concluding pages, Losurdo still affirms the “merits and strong points of the intellectual tradition under examination.” His “counter-history” has been aimed at dispelling the “habitual hagiography” that surrounds liberalism, and the related “myth of the gradual, peaceful transition, on the basis of purely internal motivations and impulses, from liberalism to democracy, or from general enjoyment of negative liberty to an ever wider recognition of political rights.”20 In reality, he emphasizes, “the classics of the liberal tradition” were generally hostile to democracy; the “exclusion clauses” required “violent upheavals” to be overcome; progress was not linear but a matter of advances and retreats; external crisis often played a crucial role; and white working-class and black inclusion in the polity came at the cost of their participation in colonial wars against native peoples.21 Nonetheless, his final paragraph insists:

However difficult such an operation might be for those committed to overcoming liberalism’s exclusion clauses, to take up the legacy of this intellectual tradition is an absolutely unavoidable task… . [L]‌iberalism’s merits are too significant and too evident for it to be necessary to credit it with other, completely imaginary ones. Among the latter is the alleged spontaneous capacity for self-correction often attributed to it… . Only in opposition to [such] pervasive repressions and transfigurations is the book now ending presented as a “counter-history”: bidding farewell to hagiography is the precondition for landing on the firm ground of history.22

So for Losurdo one can accept the indictment of actual historic liberalism, and its failure to live up to its putative universalism, without going on to conclude either that liberalism must therefore be abandoned or that liberalism’s own internal dynamic will naturally correct itself. Rather, the appropriate conclusion is that liberalism can be retrieved, but that it will take political struggle to do so.

Finally, even when the “exclusion clauses” are formally overcome, their legacy may well remain in the form of values now nominally extended to everybody, but in reality articulated in such a fashion as to continue to reproduce group privilege—for example, a “freedom” that repudiates caste status but does not recognize illicit economic constraint as unfairly limiting liberty, or an “autonomy” that does not acknowledge the role of female caregiving in enabling human development, or a “justice” resolutely forward-looking that blocks issues of rectification of past injustices. But what such tendentious conceptual framings arguably call for is a critique and a rethinking of these values and principles in the light of these exclusions (as with left, feminist, and black liberalism). That does not refute their normative worth; it just underlines the necessity for taking the whole population into account in revising them and developing a blueprint of their internal architecture adequately sensitized to the differential social location and social history of such groups, particularly those traditionally oppressed.

6. Liberalism’s Enlightenment Origins Commit It to Seeing Moral Suasion and Rational Discourse as the Societal Prime Movers

Liberalism is often associated with a historical progressivism, but a belief in the possibility and desirability of meliorism (see Gray) certainly does not commit one to Whiggish teleologies. One can oppose conservative fatalism and pessimism in its different versions—Christian claims about original sin, Burkean distrust of abstract reason, biological determinism in its ever-changing and ever-renewed incarnations—without thinking that there is any inevitability about the triumph of progress and reason. A liberalism that is “radical” will necessarily need to draw on the left tradition’s demystified analysis of the centrality of group domination to the workings of the social order.23 As earlier noted (sections 2 and 3 above), a revisionist ontology that recognizes as key social players nonvoluntary social groups in structural relations of domination and subordination will perforce have a more realistic view of the (in)efficacy of moral suasion than an ontology of atomic individuals. (p.23)

Such a revisionist liberalism will acknowledge the role of hegemonic ideologies and vested group interests in the preservation of the status quo, and their refractoriness to appeals to reason and justice. Indeed, it will often be precisely in the names of a “reason” and “justice” shaped by the norms and perspectives of group privilege—of class, gender, and race—that egalitarian social change is resisted. As Losurdo makes clear, no immanent developmentalist moral dynamic drives liberalism’s evolution. It is not at all the case that an endorsement of democratized liberal norms implies any corollary belief that the democratic struggle for a more egalitarian social order is guaranteed to be successful. Progress is possible; defeat and rollback are also possible. In general, a radical liberalism should, in some sense, be “materialist,” recognizing the extent to which both people and the social dynamic are shaped by material forces and not over-estimating the causal role of rational argumentation and moral suasion on their own. Radical liberalism takes for granted that political and ideological struggle will be necessary to realize liberal values against the opposition of those who all too frequently think of themselves as the real liberals. Radical liberalism can be descriptively realist (realizing the centrality of interest-based politics) without being normatively realist (abandoning morality for realpolitik).

7. Liberalism Is Naïve in Assuming the Neutrality of the State and the Juridical System

Again, while such a claim may be true of dominant varieties of liberalism, it need not be true of all. (Note that nowhere in Gray’s characterization is any such assumption made.)

The neutrality of the juridico-political system is a liberal ideal, a norm to be striven for to reflect citizens’ equal moral status before the law and entitlement to equal protection of their legitimate interests. To represent it as a sociological generalization of liberal theory about actual political systems, including systems self-designated as liberal, would be to confuse the normative with the descriptive. Liberalism has certainly historically had no trouble in seeing the illicit influence of concentrated group power in the socio-political systems it opposed (see section #2). The original critique of “feudal” absolutism, the twentieth-century critique of “totalitarianism,” relied in part on the documentation and condemnation of the extent of legally backed state repression in curbing individual freedom. Liberalism’s blind spot has been its failure to document and condemn the enormity of the historic denial of equal rights to the majority of the population ruled by self-styled “liberal” states: the “absolutism” and “totalitarianism” directed against white women and white workers, and the nonwhite enslaved (p.24) and colonized. Patriarchal democracy, bourgeois democracy, Herrenvolk democracy have all been represented as “democracy” simpliciter, with no analysis of the mechanisms of structural subordination that have characterized such polities, or the ideological sleights-of-hand that have rationalized them. But to claim a necessary conceptual connection between such evasions and liberal assumptions is to confuse the contingent necessities of the discourse of hegemonic liberalism—aimed at preserving, whether by justifying or obfuscating, patriarchal, bourgeois, and racial power—with what is taken to be some kind of transworld essence of liberalism. In recent decades, a large body of literature has developed that investigates the impact of class, race, and gender dynamics in the actual functioning of the state and the legal system.24 Radical liberalism would draw on this body of literature in seeking to put in place the safeguards necessary for guaranteeing equal protection not merely on paper but in reality.

8. Liberalism Is Necessarily Anti-Socialist, So How “Radical” Could It Be?

“Socialism” is used in different senses. Assuming that a romanticized return to pre-industrial communal systems is not in the cards for a globalized world of seven-plus billion people, there are three main alternatives so far (two tried, one theorized about): state-commandist socialism, social democracy, market socialism. State-commandist socialism (a.k.a. “communism”) is indeed incompatible with liberalism but would seem to have been refuted as an attractive ideal by the history of the twentieth century.25 Social democracy is just left-liberalism, whether in Rawls’s version or in versions further left, like Brian Barry’s, more worried about the inequalities Rawls’s two principles of justice leave intact.26 Market socialism is yet to be implemented on a national level, but many of the hypothetical accounts of how it would work emphasize the importance of respecting liberal norms.27 In other words, market socialism’s putative superiority to capitalism is not defended by invoking distinctively socialist values but by showing how such uncontroversial and traditional liberal values as democracy, freedom, and self-realization are not going to be achievable for the majority under the present system (or through the appeal to more recent values like sustainability, generated by awareness of the impending ecological disaster, which the present order will make achievable for nobody!)28 Other possibilities are not ruled out, but their proponents would have to explain how their models have learned the lessons of the past in both (a) being economically viable and (b) respecting human rights, the common global moral currency of the postwar epoch, which is best developed in the liberal tradition. Criticism (p.25) of the existing order is not enough; one has to show how one’s proposed “socialist” alternative will be superior (and in more than a vague hand-waving kind of way).

9. The Discourse of Liberal Rights Cannot Accommodate Radical Redistribution and Structural Change

Marxism’s original critique of liberalism, apart from deriding its (imputed) social ontology, represented liberal rights—for example, in “On the Jewish Question”29—as a bourgeois concept. But that was more than a century and a half ago. Lockean rights-of-non-interference centered on private property, “negative” rights, are indeed deficient as an exclusivist characterization of people’s normative entitlements, but such a minimalist view has been contested by social democrats (some self-identifying as liberal) for more than a century. A significant literature now exists on “welfare” rights, “positive” rights, “social” rights, whose implementation would indeed require radical structural change. The legitimacy of these rights as “liberal” rights is, of course, denied by the political right. But that’s the whole point, with which I began—that liberalism is not a monolith but a set of competing interpretations and theorizations, fighting it out in a common arena.30 The US hostility to such rights is a manifestation of the historic success of conservatives in framing the normative agenda in this country, not a necessary corollary of liberalism as such. As earlier emphasized, liberalism must not be collapsed into neo-liberalism. Nor is it a refutation to point out that having such rights on paper does not guarantee their implementation, since this is just a variation of the already discussed imputation to liberalism of a necessarily idealist conception of the social dynamic (section #6), in which morality is a prime mover. But such a sociological claim is neither a foundational nor a derivative assumption of liberalism.

Moreover, in the specific case of the redress of racial injustice, one does not even need to appeal to such rights, since the situation of, for example, blacks in the United States is arguably the result of the historic and current violation of traditional negative rights (life, liberty, property), which are supposed to be the uncontroversial ones in the liberal tradition, as well as the legacy of such practices as manifest in illicitly accumulated wealth and opportunities. Here again the hegemony of Rawlsian “ideal theory” over the development of the mainstream political philosophy of the last forty years has had pernicious consequences, marginalizing such issues and putting the focus instead on principles of distributive justice for an ideal “well-ordered” society. But an emancipatory liberalism would be reoriented from (p.26) the start toward non-ideal theory and would correspondingly make rectificatory justice and the ending of social oppression its priority.31

10. American Liberalism in Particular Has Been so Shaped in Its Development by Race that Any Emancipatory Possibilities Have Been Foreclosed

Liberalism in general (both nationally and internationally) has been shaped by race, but that does not preclude reclaiming it.32 Moreover, it is precisely such shaping that motivates the imperative of recognizing the multiplicity of liberalisms, not merely for cataloging purposes but in order to frame them as theoretical objects whose dynamic requires investigation. The conflation of all liberalisms with their racialized versions obstructs seeing these ideologies as historically contingent varieties of liberalism, which could have developed otherwise. A Brechtian “defamiliarization” is necessary, a cognitive distancing that “denaturalizes” what is prone to appear as the essence of liberalism. Jennifer Pitts’s A Turn to Empire, for example, which is subtitled The Rise of Imperial Liberalism in Britain and France, and Sankar Muthu’s Enlightenment against Empire, both seek to demarcate within liberalism the existence of anti- as well as pro-imperialist strains, thereby demonstrating that liberalism is not a monolith.33 Admittedly, other scholars have been more ambivalent about some of their supposed exemplars; see, for example, Losurdo, already cited, and John Hobson’s recent The Eurocentric Conception of World Politics, which develops a detailed and sophisticated taxonomy of varieties of Eurocentrism and imperialism that demonstrates the compatibility of racism, Eurocentrism, and anti-imperialism.34 (For instance, many European liberal theorists were anti-imperialist precisely because of their racism—their fears that the white race would degenerate as a result of miscegenation with inferior races and the deleterious consequences of prolonged residence in the unsuitable tropical climates of colonial outposts.) But the mere fact of such a range of positions illustrates that a liberalism neither Eurocentric nor imperialist is not a contradiction in terms.

In the United States in particular, as Rogers Smith has demonstrated, liberalism and racism have been intricately involved with one another from the nation’s inception, a relationship Smith conceptualizes in terms of conflicting “multiple traditions,” racism versus liberal universalism, and which I see as a conflict between “racial liberalism” and non-racial liberalism.35 My belief is that formally identifying “racial liberalism” as a particular evolutionary (and always evolving) ideological phenomenon better enables us to understand the role of race in writing and rewriting the most important political philosophy in the nation’s history, from the overtly racist liberalism (p.27) of the past to the nominally color-blind liberalism of the present. From the eighteenth- to nineteenth-century accommodation to racial slavery and aboriginal expropriation to the twentieth-century tainting of welfare and social democracy on this side of the Atlantic,36 race has refracted crucial terms, concepts, and values in liberal theory so as to remove any cognitive dissonance between the privileging of whites and the subordination of people of color. Correspondingly, the shaping of white moral psychology by race and the distinctive patterns of uptake of abstract liberal values (“equality,” “individualism”) in such a psychology then become legitimate objects of investigation for us.37 One begins from the assumption that these norms will be color-coded in their actual operationalization, so that any efficacious framing of an interracial political project will need to anticipate and correct for this differential understanding rather than being naively surprised by it. But such racialization (as popular interpretation and reception) is going to be a common problem for any American ideology with emancipatory pretensions. Liberalism is certainly not unique in that respect, as the history of the white American left and socialist movements illustrates. As Jack London famously put it at a meeting of the Socialist Party in San Francisco “when challenged by various members concerning his emphasis on the yellow peril”: “What the devil! I am first of all a white man and only then a Socialist!”38 Herrenvolk socialism existed no less than Herrenvolk liberalism.

#### Controls on markets extend the franchise of global democracy. Inside/outside binaries deny transnational solidarities and valorize authoritarian projects.

Christopher **MURRAY** PhD Candidate IR LSE **’20** *Anti-imperial world politics: race, class, and internationalism in the making of post-colonial order* p. 42-46

Hierarchy is obscured a third way through an analytical bias which privileges ethnic and cultural political leaders over forms of racial, class, and gender hierarchy internal to groups. The sole focus on elite representatives can reproduce a civilisationist ontology, and can lead to self-orientalism, or the appropriation and inversion of stereotypes about ‘non-Western’ civilisations in order to carve out autonomous space for ethnicised authority (Said, 1979). Against the claim that non-Western civilisations cannot order because of inferior values, comes the counter-claim that they can, and that those values will make them just as good ‘orderers’ – if not better – than the West. This can lead to the inclusion of non-Western values which are seen to be more amenable to hegemonic international order, and the marginalisation of other non-Western values deemed destabilising.86

Even recent scholarship which has attempted to nuance and pluralise the historiography of anticolonial nationalism remains stuck in this way. For example, Getachew (2019) presents a convincing and welcome argument that the anticolonial nationalisms of Caribbean and African thinkers were not inert and narrow, but should be judged as attempts at worldmaking. She correctly argues that activist theorists like Du Bois, Padmore, Nkrumah, and Eric Williams were not building nations as ends in themselves, but were initiating international projects meant to address the disparities within international society.

However, against her own intentions, Getachew ends up valorising the democracy-undermining projects of elite worldmakers by focussing entirely on the activities of racial – i.e. civilisational -- representatives. Instead of opening possibilities for a truly transnational approach to the problems of post-colonial politics, Getachew reinscribes R.B.J. Walker’s (1993) ‘inside/outside’ divide between ‘the international problem of hierarchy’ and ‘the internal question of pluralism and diversity.’87 Critiques of elite nationalism, such as those by Fanon, James, Lorde, Glissant, or even Du Bois in his later years, are mostly missing from Getachew’s analysis. These writers did not accept that hierarchy was simply an inter-governmental problem which was separate from ‘internal’ problems of pluralism and diversity. Getachew is correct that worldmakers like Kwame Nkrumah or Norman Manley were concerned with establishing an international norm of non-domination. However, her framing does not sufficiently address the problem that international non-domination built on ‘domestic’ domination of cultural minorities not only reproduced the logics of empire, but it also undermined the moral upper hand and strategic alliances between oppressed groups represented by the transnational solidarity of radical activists pushing for greater democratic controls on global capitalism. The democratic scale required to address problems of international hierarchy was, and is, transnational, making pluralism and diversity not just the province of national elites, but the concern of any group attempting to build solidarities and alliances to address global ills.

In agreement with the view that anti-imperialism is worldmaking, but against civilisational ordering, I argue that a major animating impetus of anti-imperialism was the desire to remake the world in order to enable the continual formation of pro-democratic alliances beyond national or civilisational boundaries. As a broader discourse, anti-imperialism was not just about negative right to freedom from alien rule, but about democratic access to the international realm of politics and the global economy.88 Within the anti-imperial discourses which began in the interwar period, there was a fundamental tension over where the authorisation of democratic right would come from: post-colonial states or the international proletariat. While worldmakers like Nkrumah or Manley wished to build the capacity of post-colonial nation-states, critics like Fanon or James also wished to radically extend the franchise of global democracy.

As C.L.R. James argued in a lecture series in August, 1960, the increasingly global penetration of capital gave rise to a need for new forms of political and economic unification beyond the national state. ‘National capitalistic states’ were already in the process of unification, with new states in the formerly colonised world in danger of simply replicating a political form which was quickly becoming subordinate to the demands of the world market.89 Presaging Quinn Slobodian’s (2018) recent argument about the symbiosis of free market ideologues and nation-states, James saw that

[A]t a certain stage capitalism begins to run to the government for salvation. Government also begins to enclose its production within the national boundaries because of war and tariffs. The capitalist, as soon as he gets into trouble, runs to the government and says, “Look how many people I am feeding, and look at the value of the production that I am producing for the benefit of the country. I am in a crisis. I am in difficulties owing to no fault of my own, but these miserable people in the other countries are under-selling me. They are paying their workers very little. Look how much I am paying mine. I would be glad if you could give me a subsidy of some kind.” And as he has helped to put the government into power, the government looks into the matter and appoints a commission and tells the commission to examine the industry rigorously and give him the subsidy he wants. He takes hold of the subsidy and, especially if an election is near, he goes to his political party, passes a little bit to them, and tells them to be careful to say how government interference is ruining capitalist production all over the world.90

For James, the unification of states into larger federations was a particular means to a more important end: the creation of radical democratic controls on the world market and the global promotion of egalitarianism as justice. The most important question of the post-colonial world was not which civilization should have the right to impose order, but ‘who’ – as in which class – ‘will control the world market?’91 Because the national state’s democratic accountability was compromised by capital, James believed that a progressive form of unification could only be achieved ‘by a social class which, from its very position in industry and the structure of society, can reach out to others of the same class in other countries.’ As I discuss further in Chapters 4 and 5, James was not of the opinion that states could be abandoned entirely, but it was a necessity that ‘[m]ankind… leave behind the outmoded bourgeois class and all the obstacles which the national state now places in the way of an international socialist order.’92

#### The political is a discursive assembly, not top-down power. Dissensus exerts leverage over government policy.

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Reconfiguring the topography of the common

Agamben is the one who best describes how the conversion of political authority into a superpower is brought about by those who see the problem of political power from the vantage point of an opposition between law and bare life. He makes use of Foucault’s early distinction between sovereignty and biopower, turning what Foucault describes – first as an opposition in Abnormal (A: 2003), and later on in Security, Territory, Population (STP: 2007) as a difference between sovereignty and security – into an identity, correlating the exceptionality of sovereignty with the exception of bare life. Hence, Agamben can translate the radical suspension of politics in the exception of bare life into the law of modern democracy, as defined by both Arendt and Kant. Biopolitics becomes democracy’s accomplice as a bare life between life and death. Hegemony becomes a mediation of Foucault’s notion of biopower as control over life and Schmitt’s notion of sovereignty as the power to decide on the state in which normal legality is suspended. The signature of hegemony shifts to one which positively intervenes between human and natural life as a new, more liberating form of domination for governing, neither the subject nor the enemy, but the sacred life of the people as a population. Or, as Rancière synthesizes Agamben’s attempt to overcome the opposition between absolute power and human rights (2010: 65–66), Democracy’s secret – the secret of modern power – can then emerge into full view. State power, now, is concretely concerned with bare life, itself no longer the life of the subject that the power wants to repress, nor the life of the enemy that it has to kill, but, Agamben says, a ‘sacred’ life – a life taken within a state of exception, a life ‘beyond oppression’. This signature of hegemony ‘beyond oppression’ presents itself as a command from above to show duty to otherness in political communities. Democracy as obedience to the rights of the Other in the res publica sweeps aside the heterogeneity of political dissensus in the name of a more radical heterogeneity. According to Rancière, this is to neglect how ‘dissensus is not a conflict of interests, opinions or values; it is a division inserted in “common sense” ’ (2010: 69). Dissensus is an ongoing dispute over what is given, and the frames in which we perceive and understand things as given. This is also how Foucault interprets politeia : democracy is not a matter of human rights; it is about the capability and knowledgeability of political subjects to place the scenes of dissensus in time and space. Rancière illustrates this point with the political struggles of women in Western history (2010: 69, emphasis in original): Women, as political subjects, set out to make a twofold statement. They demonstrated that they were deprived of the rights that theyhad thanks to the Declaration of Rights and that through their public action that they had the rights denied to them by the constitution, that they could enact those rights. They acted as subjects of the Rights of Man in the precise sense that I have mentioned. They acted as subjects that did not have the rights that they had and that had the rights they had not. This is what I call a dissensus: the putting of two worlds in one and the same world. Expressing political subjectivity in a political community is not a matter of being liberated from something or someone by something or someone. It is to reject, in one’s actual practice of freedom, being subjected to any political institution or human being. It is to deny that there is a superpower living in a sphere not only different from but also superior to the political community of free and equal subjects. It is to dismiss any categorizing of political actors by a Herrschaft making distinctions between superiors and subordinates, rulers and ruled, strong and weak, and so on. In a way, Foucault is pursuing exactly the same dual tactics as does Rancière above when he states that ‘nowadays, the struggles are against the forms of subjection – against the submission of subjectivity – is becoming more and more important’ (EW3: 351). He denies that mechanisms of subjection ‘merely constitute the “terminal” of more fundamental relations’ (EW3: 352), such as ideological or economic structures. Furthermore, like Rancière, Foucault is skeptical toward those who reduce subjectivation to a matter of ‘unfolding’ the program for a universal reason freed from domination in history, as if it were ‘possible to say that one thing is of the order of “deliberation” and another is of the order of “oppression” ’ (EW3: 354, emphasis in original): I do not think that there is anything that is functionally – by its very nature – absolutely liberating. Liberty is a practice . So there may, in fact, always be a certain number of projects whose aim is to modify some constraints, to loosen, or even to break them, but none of these projects can simply by its nature, assure that people will have freedom automatically, that it will be established by the project itself. Finally, like Rancière, Foucault denies that the exercise of hegemony in, and through, discursively structured and institutionalized asymmetries of power and signification is at the core of politics (FL: 444): It is within the field of the obligation of truth that it is possible to move about in one way or another, sometimes against effects of domination that may be linked to structures of truth or institutions entrusted with truth. It is a shame Rancière never sees this affinity between Foucault and himself when it comes to identifying how a political subject combines power, self-governance and knowledge as one who ‘can’, ‘will’ and ‘understands how to’ practice her freedoms inside a political community. Rather, he believes that ‘Foucault ... was never interested in this question, not at a theoretical level in any case. He was concerned with power’ (2010: 93). But he was interested. Unlike Mouffe and Rancière, Foucault does not analyze agonistic democracy in the shadow of antagonism and dissensus; nor does he reduce it to a manifestation of either hegemony or the popular will (EW3 1994c : 342): Rather than speaking of an essential antagonism, it would be better to speak of an ‘agonism’ – of a relationship that is at the same time mutual incitement and struggle; less of a face-to-face confrontation that paralyzes both sides than a permanent provocation. To Foucault, agonistic democracy does not derive from any exception but from the unceasing tension between freedom and truth, politeia and parrhesia in ongoing processes of authorization and normalization. Problematization is at the core of these processes as chronic two-way contestations of the discursive practices of authority and community inside political systems: the problematization of how people are governed (govermentality) depends on the ethical elaborations of the subject (knowledge) for making a difference (power), whether acting as an incumbent of political authority or as a lay member of a political community. Therefore, rather than speaking of authorization and normalization as opposed to practices of subjectivation and intersubjectivation in political communities, and vice versa, we should consider their mutual autonomy and dependence (EW3: 343): The analysis, elaboration, and bringing into question of power relations and the ‘agonism’ between power relations and the intransitivity of freedom is an increasingly political task – even, the political task that is inherent in all social existence. The relation of political authority as power-knowledge to governing, subjectivation and the practice of freedom is the basis of recurrently problematizing and criticizing any claim to political primacy in history. If Rancière had delved deeper into Foucault’s analyses of government by truth, he would surely have seen that Foucault’s critique of the sovereign state and the security state grows out of his conception of the political as an ensemble of discursive practices of power and freedom. 11 The state is not identical with the political, but one of its emergent properties. The duality of political authority and community It is easy to understand how Foucault could become identified with both the state of exception and the political community of exception. If one, for example, reads only Foucault’s early work on madness and discipline, the power/resistance dichotomy is the first that leaps out at one, as an indication of ‘the necessity of combat and the rules of strategy’ (DP: 308). The same holds good for his later lectures in STP (204), in which he speaks of ‘the coup d’Etat [as] the irruptive assertionof raison d’Etat ’. Statements like these cannot but leave the impression that Foucault’s politics is about sovereignty vs. law, power vs. resistance, hierarchy vs. anarchy, police vs. laypeople and so on. However, when Foucault focuses so much on statism and power/resistance in modernity, it is not because he thinks that hegemony and antagonism are at the core of the political, but precisely in order to problematize them both. To him, problematizing conflict means showing how things could be different (PK: 64): If one is interested in doing historical work that has political meaning, utility and effectiveness, then this is possible only if one has some kind of involvement with the struggles taking place in the area in question. I tried first to do a genealogy of psychiatry because I had had a certain amount of practical experience in psychiatric hospitals and was aware of the combats, the lines of force, tensions and points of collision which existed there. My historical work was undertaken only as a function of those conflicts. Foucault was from his young days actively engaged, practically as well as analytically, in problematizing how modern science and society continuously and systematically seek to cover up their exclusions behind a veil of rationality and legitimacy. To him, critique is not primarily to ‘scrutinise and restrain arbitrary power’ (Keane 2013: 245). It is, more than anything else, to problematize how, the more undistorted and thickly legitimated political decisions and actions appear and are believed to be, the better, more smoothly and unproblematically hierarchization, disciplinary subjection and policing function. In presupposing that political domination presents no special problems to democracy when first proved to be effective and legitimate for protecting and serving ‘We, the People’, modern reason turns a blind eye to its exclusions of otherness as ‘anomalies’ in or ‘deviations’ from the existing order. Authentic otherness is excluded from view a priori by reference to the necessity for removing any temporal or arbitrary disorder from society’s underlying general or necessary order. This is also Agamben’s and Rancière’s critique of modernity and the very reason why they both argue that the political is prior to law, just as dissensus is prior to consensus. But to Foucault it is the existence of the political authority relationship between political authorities and laypeople in their political communities that makes it all possible. It is not the state, whether as a sovereign state or as a security state, that identifies the political. Nor is it the democratic political community, which, as Rancière puts it (2010: 213, emphasis in original), breaks with consensus [in its] abolition of every form of arkhe , of every way of producing a correspondence between the places of governing and a ‘disposition’ to occupy these places. The politics of hegemony and dissensus are but two examples of the selftransforming capacity of political authority as a relationship involving freedom and power in both directions which could be balanced through the good parrhesia of freedom and truth. Foucault illustrates the fundamental duality of political authority and political community in his lectures from 1977 until he dies in 1984. He sets out by problematizing the conception of sovereignty as a unified entity, making up the space of the political as a coercive superpower over subjects within the prince’s or king’s territory. He shows how the original dilemma of sovereignty is its neglect of the facts that: ● one cannot govern a population as one governs a territory; ● g overning the construction of space is not the same as protecting and serving a home or place; ● t he functional delimitation of the political from all other necessary aspects of group life is a condition of demarcating the political territorially. The political is a general societal condition like those of the economic, the cultural and the religious; it is a constitutive aspect of all social and human relations, from the local to the global. Furthermore, its generality lies in its transformative capacity to do what could not be done without it: authorizing and normalizing the way policies are articulated, performed, delivered and evaluated**.** The fulfilment of these tasks does not depend on the maintenance of a centralized form of legitimate domination for acquiring effective control over subjects and society. It is necessary to accomplish them, however small the actual degree and extent of control the political authority may possess in relation to other political and nonpolitical forces, such as an informal ruling elite or an economic class. In this way, it is the notions of function, space, population and, most of all, the power-knowledge of subjectivation that show why Foucault wants to ‘decapitate the king’ and connect the politics of exception to the policy of cooperation for handling or solving common concerns. The analysis of political authority and democracy as revealing the identity of opposites does not only block a problematization of the juridical–statist identification of the political with an overarching norm that needs a hegemonic superpower to assert itself in the validation, rather than in the suspension, of this norm (Agamben 2005: 86). It also hinders the recoding of the political as a complex or ensemble of discursive practices for deciding on and doing policies in an acceptable manner, which is distinctly open to the possibility of self-governance and co-governance from below. Finally, to make the quest for social control within one’s territory the primary task of democratic government is not merely to reduce the common interest to a superpower’s national interest; it is also to disregard how a central political authority, in the long run, can only become stronger by enabling and empowering the population to get better at governing and taking care of itself as a community of equal subjects. Beyond opposition to difference Inside the political, democracy and parrhesia could be made to work together as the simultaneous manifestation of contingency and necessity; but only if we can transcend the mal adjustment of the democracy of equals and the ascendancy of parrhesia that the politics of exception expresses. This either turns the citizens into a superpower of dissensus and rupture or includes the parrhesiast as one more alterity in the community of equals ‘constituted through polemicizing over the common’ (Rancière 2010: 104). In any case, the result is that ‘the game of democracy and of truth-telling, do not manage to combine and suitably adjust to each other in a way which will enable this democracy to survive’ (GSO: 181). Rather, it insulates the political authorities from the political community with which they are endogenously connected as parties to a political authority relationship that requires the commons’ acceptance and recognition in order for it to continue in, and through, history. Political authority is constitutively open to exception made by political authorities or laypeople in their political communities. However, a minimal degree of cooperation between them is required for their continuous restructuring of their political regime and their relevant nonpolitical contexts – sometimes in the face of violent ruptures, difficult struggles and high-consequence risks (Bang 2009a, b, 2014). Obviously, if self-governance and co-governance are to become the basis of political community, then parrhesiast political authorities are required who can see the truth, are capable of telling it, are devoted to the pursuit of common concerns, and are generally reliable, honest and incorruptible. However, this is not the signature of hegemony, but the sign of a political authority with integrity that decides and acts (GSO: 178) on the basis of a democratic structure, a legitimate ascendancy exercised through a true discourse, and [as someone] with the courage to assert this true discourse. Thus, Foucault’s political analysis of government by truth is not founded on any claim to the primacy of either conflict or consensus, and does not give priority to either the political authority or the political community. In fact, the conception of the good political parrhesia moves political analysis beyond all rulers–ruled oppositions. It compels political researchers to conduct their analysis in light of the possibility that a good cooperative circle of political communication and interaction between political authorities and laypeople could be made to occur, if only both parties to the authority relationship would accept and recognize the real and necessary political difference between the interdependent logics of politeia and parrhesia . Hence, to critique modernity in Foucault’s manner is not equivalent to identifying the political with an extraordinary decision, which then is coercively imposed on people. Nor does it compel us to conclude that the circle of political authority and political community merely expresses the political construction of ‘a paradoxical world that puts together two separable worlds’ (Rancière 2010: 39). That only becomes the case if acceptance and recognition of political authority is equated with a forced compliance induced through disciplinary subjection and policing. Then, evidently, the ethical life among equals inside political communities will appear as always and intrinsically opposed to political authorities’ world of lived necessity. The virtue of being a political lay actor in a democratic political community is not just that one can act without a command, ‘ as if a command was not needed’ (Bauman 1995: 59, my italics). It is, rather, to know that a command/obedience relation is not necessary for cooperating with political authorities in the articulation and performance of common concerns. What is needed is merely the acceptance and recognition of the difference between being a political authority and a lay member of a political community. Placing political cooperation before consensus and dissensus The duality of political authority and political community comes out clearly in Foucault’s specification of the difference between parrhesia and democracy (GSO: 183–184): Not everybody can tell the truth just because everybody may speak. True discourse introduces a difference or rather is linked, both in its conditions and its effects, to a difference: only a few can tell the truth. And once only a few can tell the truth, once this truth-telling has emerged into the field of democracy, a difference is produced which is that of the ascendancy exercised by some over others. True discourse and the emergence of true discourse underpins the process of governmentality. If democracy can be governed, it is because there is a true discourse. Does this signify that Foucault, after all, is speaking of parrhesia as power over others? Well, some would probably say he is, but I think he is not, at least not in the normal sense of domination as class power or symbolic violence, manifesting a conflict of interest or meaning in which resistance is repressed and wills are subdued by the stronger class or superior will to knowledge (Bourdieu 1992, Devine and Savage 2005, Lukes 2005, Poulantzas 1975). We must remember that the good parrhesia grows out of democracy in the authority relationship, and, therefore, that the authority relationship between authorities and laypeople, in the ‘original position’, must be functional before it can, for example, take shape as a command/obedience relationship. To stress the importance of ascendancy for the good political parrhesia is not the same as claiming that politics will always be dominated by circulating power elites or classes. As distinct from elitists like Michels, Mosca and Pareto, Foucault does not classify people inside the political according to the power and control they actually hold. He merely wishes to point out the difference between those few who are the occupants of the political authority roles and the many ‘ordinary’ members who are not. This may also be why he himself, in the end, felt compelled to make an explicit distinction between power and domination, as in this interview from 1982 (FL 1996 : 417): Domination is a particular case within the different possibility of power relations. You can have a power relation without this type of domination. But what makes me uncomfortable with these analyses – at least those by Habermas – is the fact that when he speaks about power, he always understands it as domination. And he translates ‘power’ by ‘domination.’ To exercise political ascendancy is not the same as exercising command and control over others. Political authorities need not be coextensive with the politically relevant members; nor do they have to be driven by the goal of appropriating power above all else (cf. Easton 1965b: 214–215). Furthermore, however little actual control laypeople may possess under given circumstances, it is still necessary for them to systematically articulate and perform policies that most people will accept and recognize as binding, at least most of the time. However, the point is that some basic faculties are required to be in a position to exercise good political parrhesia . You cannot just walk in from the street and do so. Special political competences are required, developed from day-to-day experiences with the risks, problems and challenges that have to be dealt with in, and through, systematic political decision and action. Political authorities may sometimes function as puppets for certain dominant socioeconomic interests or identities. Yet, no matter how little actual control they possess, they are still directly and immediately responsible for how policies are authoritatively formulated, programmed, ‘packaged’ and carried out for society and the population in day-to-day political life. Likewise, laypeople in their political communities may be downtrodden by a totalitarian or authoritarian regime and hindered in all ways from exercising their creative political capacity to affect the production of political outcomes. Nevertheless, not even the most totalitarian regime can afford to ignore the political fact that it could not exist for a moment if laypeople suddenly refused to accept and recognize themselves as bound by authority, for whatever combination of reasons. The Eastern European and Chinese revolutions should at least have taught us that much. What we should emphasize much more today is the possibility of introducing the model of good parrhesia as an alternative to the models of the extraordinary decision-maker and the ordinary exception. What laypeople do in their political communities is not reducible to a matter of repoliticizing what has been depoliticized by the police. It is not merely this notion of democracy as dispute and struggle that is intrinsic to understanding what political community is all about. It is, more than anything else, the ability of laypeople to continuously problematize how policies are articulated and performed in time-space. Whereas politicization is tied to the logic of dissensus and consensus, problematization is connected with the logic of accepting and rejecting. Where problematization is continuous, politicization is discontinuous. Thus, problematization provides ‘ordinary people’ inside their political communities with a much more long-lasting and general political significance and relevance than is possible in politicization. It makes the never-ceasing spontaneity and creativity of ordinary citizens the ground for developing the politics of truth of the parrhesiast, by igniting and keeping the political authority responsive to conducting the circle of the good parrhesia.

# 2ac

## case

### overview – 2ac

### circumvention – 2ac

## k care work

### care work k – 2ac

#### Evaluate the potential consequences of affirmative advocacy. Thinking and judging what is beyond our individual capacity is a vital political activity. Thinking imaginatively makes political change possible.

Daniel **CHERNILO** Social and Political Thought @ Loughborough University **’17** *Debating Humanity: towards a philosophical sociology* p. 77-79

III

We have said that, In Life of the Mind, Arendt’s argument on thinking, willing and judging is construed in a similar way to how, in The Human Condition, she had introduced labour, work and action. In the case of our mental faculties, it is the temporal dimension that organises Arendt’s triadic structure: thinking belongs to the present, judging belongs to the past and willing to the future (1978 I: 191). Thinking plays a major role in the argument on the vita contemplativa because it is the skill that actually makes willing and judging possible. Thinking alone allows for the withdrawal that is necessary for the activation of the life of the mind as a whole; thinking implies a temporary yet essential withdrawal from the world, it requires the suspension of our relationship with the world and comes to an end as soon as ‘the real world asserts itself again’ (1978 I: 75).18

The thinking ego is neither an empirical self nor the soul in so far as they are concerned with our feelings and bodily experiences. The thinking ego has the ability to offer a critique of that which appears as given and thus involves a ‘radical’ break from what becomes available to the senses; the thinking ego is therefore ‘ageless, sexless, without qualities, and without a life story’ (1978 I: 43). What makes the thinking ego radical is the fact that it takes objects as they are given in the world and then attributes to them a new, general, meaning through this mental ‘experiment of the self with itself’ (1978 I: 74). Pure thinking is constituted in this fashion: ‘it is this duality of myself with myself that makes thinking a true activity, in which I am both the one who asks and the one who answers’ (1978 I: 185).19 The thinking ego, then, is unconditioned, invisible, reflexive and self-contained. But given the fact of human plurality, Arendt argues that the thinking ego, while it lives in solitude, it is never lonely; it is soundless though not silent, it needs words but has not listeners (1978 I: 32, 47, 71–5, 98–9). The thinking ego is singular but is never only one: the thinking ego is ‘the two-in-one of soundless dialogue . . . while engaged in the dialogue of solitude, in which I am strictly by myself, I am not altogether separated from that plurality which is the world of men and which we call, in its most general sense, humanity’ (2005: 22).

This intrinsic unworldliness of thinking makes it hardly surprising that it has traditionally appeared as the opposite of the active life. The same unworldliness, moreover, prevents us from turning thinking into the key or essential marker of the shared humanity of human beings. Through its rejection of appearances, the thinking ego possesses an intrinsic reflexive ability that is fundamentally ‘self-destructive’ with regard to ‘its own results . . . thinking itself can never be solidly established as one and even the highest property of the human species’ (1978 I: 88). Yet at the same time, as a purely contemplative life is not wholly human, Arendt equally contends that a life fully devoid of thinking also ‘fails to develop its own essence – it is not merely meaningless; it is not fully alive. Unthinking men are like sleepwalkers’ (1978 I: 191). Thinking as the possibility of self-transcendence, connects rather than separates the vita activa and the vita contemplativa: ‘whenever I transcend the limits of my own life span and begin to reflect on this past, judging it, and this future, forming projects of the will, thinking ceases to be a politically marginal activity’ (1978 I: 192). Because thinking is another particular expression of human plurality, it is also deeply connected to politics.

#### Rejecting competition and embracing activities that are “cooperative and radically antiwork” in all instances is bad – competition can increase human welfare, and cooperation between firms produces the revolving door and violence on a larger scale.

Julie **NELSON** Global Development and Environment @ Tufts **’10** “Care Ethics and Markets: A View from Feminist Economics” GLOBAL DEVELOPMENT AND ENVIRONMENT INSTITUTE WORKING PAPER NO. 10-02 p. 15-16

Competition and Cooperation

In order to keep this in mind, it may be helpful to deconstruct dichotomous thinking about competition versus cooperation. Competition refers to trying to do as well as or better at something than someone else, while cooperation refers to coordinating activities with someone else in a joint effort. The usual view is that one precludes the other, and that market-oriented capitalism is all about competition. Instead, thinking about them as complementary phenomena that each have both positive and negative aspects, may be more helpful, as illustrated in Figure 4.

Table

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Competition can have positive aspects because—as economists are right to point out—it can give people incentives to be creative, hard-working, and look for ways to produce things more cheaply. Of course, the form of the competition makes a big difference. Innovation in the form of creating a new cure for disease can increase human welfare, while innovation in the form of new opaque and deceptive financial instruments decreases it. Cutting costs through increased energy efficiency is generally a good thing, while cutting them by cutting the wages of the poorest workers in a "race to the bottom" is not. But what this leads back to is exactly the point that ethics—ethics of honesty, and ethics of caring about the wellbeing of flesh-and-blood human beings—cannot be avoided in economic life. **Competition is not "structurally," by its nature, good or bad: It is good or bad as we make it.**

While cooperation tends to carry positive connotations of harmony and helpfulness in working for the social good, it is important to note that cooperation can also have bad consequences. In economic life, it can take the form of collusion and exclusive deals among companies, which are the very things that undermine the healthy aspects of market competition. **Too-close cooperation between businesses and government gives us the military-industrial complex**, as well as Congressional actions that exclusively serve Wall Street constituencies. As in life in general, when "the social good" is defined over too narrow a social group, cooperation means the solidarity of "insider" groups who may serve themselves at the expense of "outsider" groups. Feminist and civil rights activists had to struggle for decades, for example, to crack the highly cooperative white-male-solidarity behaviors that prevailed among employers and union leaders, in order to allow women and minorities the chance to compete for jobs.

The positive complementarity between competition and cooperation arises because, as pointed out above, a spirit of cooperation between buyers and sellers, and between businesses and governments, is just as necessary as competition for successful market functioning. But neither competition nor cooperation on its own, or any naïve mix of the two, is "structurally" good. **The devil is in the details**, and only **specific, applied ethical evaluation** can help us judge economic phenomena as more or less worthy of approbation.

#### AND, their links are self-fulfilling prophecies – strict divisions between “care” and “marketplace work” are socially constructed and breaking them down doesn’t do anything.

Julie **NELSON** Global Development and Environment @ Tufts **’10** “Care Ethics and Markets: A View from Feminist Economics” GLOBAL DEVELOPMENT AND ENVIRONMENT INSTITUTE WORKING PAPER NO. 10-02 p. 9-15

Justice and Care

All of this analysis suggests that, far from being opposed to each other, justice and care are as two legs, or two sides of coin. The two orientations may be analytically distinguishable (according to a categorization that we ourselves create—just like we create gender), but they are united in practice. Putting them into a gender-value compass, we can think of them having a positive complementarity, as illustrated in the top two cells of Figure 3. The bottom two cells indicate, again, what happens if we try to have one without the other. The illusion that justice can exist without care leads to coldness. On the other hand, an overly sentimental emphasis on care, to the exclusion of justice, leads to unjustifiable favoritism. One can also think of another problem with purely rational justice being a lack of motivation to act, while unreflective impulsiveness can be a problem with an empathy-only approach.

Table

Description automatically generated

For example, consider a picture that appeared in national newspapers many years ago. The photo showed an Latin American family sitting around an aged and lonely immigrant man whom they had taken into their circle of friendship, care, and protection. Very nice. The old man, however, was Dr. Josef Mengele, the notorious Nazi war criminal. I use this to remind myself that one should not one-sidedly elevate considerations of care over considerations of justice.

Implications for Economies

Neoclassical economics teaches that markets and businesses are mechanical mechanisms populated by self-interested, autonomous "economic man." Individual consumers or workers are seen as discrete, separative agents who maximize mathematical utility functions, while firms are portrayed as discrete, separative economic actors that maximize mathematical profit functions. If these teachings were true, only the thinnest sort of rationalist and individualist ethics might be applicable. In fact, the only ethical judgment admitted by many mainstream economists is to hold sacrosanct the value of free individual choice.

Is Ethics Unnecessary/ Impossible?

Conservative, free-market economists furthermore argue that ethical considerations beyond this are unnecessary, because the "invisible hand" of markets automatically assures that self-interested actions serve the social good. In contrast, critics from the political left say that incorporating rich ethical considerations in market-oriented systems is impossible, because the juggernaut of global corporate capitalism obeys only its own inhuman rules. Because firms are profit maximizers, these critics reason, the capitalist system simply institutionalizes greed and self-interested competition. Ethical action therefore, it is reasoned, requires supplanting this system with something else— something more altruistic and cooperative. If one assumes that businesses are intrinsically mechanical and anti-social, then the idea of "business ethics," much less "care ethics" in business, seems impossible.

But is it?

But what if the economy is not a machine, and people in their economic lives are not "economic man"? The feminist analysis described above notes that these beliefs are based, **not on empirical study of actual behavior,** but on a **physics-envy methodological bias** and the macho **image of the separative self**.5 There is, in fact, plenteous evidence that these beliefs are wildly off the mark. The biased nature of these beliefs can be examined at three organizational levels: the level of human individuals, the level of businesses, and the level of markets.

Individuals Are Not "Economic Man"

Starting with the simplest organizational unit—the human individual—there is, in fact, considerable empirical evidence that people do not leave their feelings, values, ethics, sociality, and search for meaning behind when they enter commercial life. The vast business literature on the psychology of employee motivation, for example, shows that people are complex social animals, even when at work (Herzberg 1987). Research on motivation finds that people are generally motivated by a mix of intrinsic rewards (such as enjoyment or a feeling of contributing to something worthwhile) and extrinsic rewards (such as money or status) (Ryan and Deci 2000). Phenomena of care, including caring about one's coworkers or customers, caring about the quality of the product or service one provides, or caring about the impact of one's business on the world, are endemic to well- run businesses—as well as often missing in poorly-run ones (Kusnet 2008). Feminist economists have been especially interested in this topic, since so many women have traditionally been employed in "caring work" such as nursing or teaching (Folbre and Nelson 2000). Of course, other human motivations besides caring—including a desire for dominance or revenge, or a desire to maintain rigid hierarchies of race, class, or gender— show up in the workplace as well. The unemotional, a-social employee who gets only disutility from expending effort at work, and utility from pay, is a fiction invented by economists.

Academics may be more likely to acknowledge our own nonpecuniary interests in our work, than the possibility of nonpecuniary interests on the part of business leaders. While we generally feel that we do our work at least partly for the love of knowledge or learning, or for the social good, we may assume that a business person qua businessperson must be interested only in money. But consider how some leaders talk about what they do. For example, David Packard (of Hewlett-Packard) once said, ‘Profit...is not the proper end and aim of management – it is what makes all of the proper ends and aims possible,’ with the proper aim being to ‘make a contribution to society’ (Collins and Porras 1994).Others talk about feeling good about providing jobs, needed services in a community, quality bread, path breaking books, interesting innovations, environmental improvements, or express pride in carrying on a legacy or tradition. Don't most people want to do something worthwhile? Surveys of business leaders suggest that shareholders are often only one of many constituencies considered in decision making (along with workers, communities, suppliers, creditors and so on).6

Some executives, of course, have bought into pure "bottom line," money-oriented, short-term thinking, and blare on loudly about it in the press and in business publishing. And some leaders, it may be objected, may voice interests in jobs or the environment purely as a public relations move. But—speaking here entirely on the level of individual motivations—isn't there something quite dehumanizing about taking the stereotype of the greedy, single-minded Chief Executive Officer and applying it, untested, to all business leaders, simply because they seem to be different from "us"? (And isn't this even a bit unethical?)

Now a further objection, of course, can be raised. One may grant that an individual businessperson may be very moral and care a great deal about the social good, but then go on to argue that the structure of businesses will either extinguish that impulse (perhaps by causing that person to be fired for poor profit-making performance) or make it ineffective (through procedural or groupthink factors)—because, of course, firms must maximize profits.

Businesses

The belief that firms are mechanical profit-maximizers can be hard to overcome. Many believe, for example, that profit maximization is mandated by law. But an actual examination of the relevant legal codes and case law shows that this is not so. The codes say that the purpose of a business is to run a business—profit is generally not even mentioned.7 Many state legal codes explicitly state that the interests of stakeholder groups such as employees and customers, long-term interests, and the interests of the larger community, can all be legitimately be taken into account in business decisions (Adams and Matheson 2000). And the belief that an directors or executives will be hauled into court if they act on any goals other than profit maximization is quite exaggerated. It is actually quite difficult to remove an officer through legal action (Smith 1998).

Likewise, the idea that executives will automatically be sacked if they do not profit-maximize gets more credence than it deserves. The current business news is, for example, full of cases of financial industry CEOs who are being kept on—and even getting multi-million dollar bonuses—after leading their organizations into ruin. Now, it may not be clear why this is an argument against the "profit maximization" dogma, since in many people's minds the phrases "profit maximization" and "greedy CEOs" seem to point to the same phenomenon. In actuality, though, there is a critically important difference.

Firms are complexly structured social organizations. The owners of a firm, which in the case of a corporation are its shareholders, are in principle the recipients of the firm's profits. Profits are what is left over after all revenues are gathered in, and all necessary expenses are paid, and the shareholders are supposed to receive them through payments of dividends or through increases in the value of their shares. A corporation has a Board of Directors which is supposed to oversea the management of the firm, and the board in turn hires (and approves the compensation packages for) the top executives who handle the firm's day-to-day operations. So "profit maximization" or "creating value for the shareholders" should mean not paying any more than is strictly necessary to get managerial talent—that is, should require keeping a lid on CEO salaries. Shareholders are among the people most outraged by the skyrocketing executive compensation packages of recent decades, as articles in magazines such as Fortune attest (Kirkland 2006).

Ironically, the CEO compensation fiasco has developed, in good part, as a direct result of theories based on "economic man." Not being able to believe that anyone would have sufficient incentive to run an business in the interest of shareholders (and/or employees, customers, the community, society, etc.) for a mere fair and reasonable salary, neoclassical economists suggested giving CEOs stock options and bonuses based on performance. This means that CEO compensation goes up when the price of company shares go up or certain other goals are achieved. In theory, then, their pecuniary interests and the shareholders' pecuniary interests would become aligned. But if people are opportunistic enough to care only about their own compensation and not about their company, they are also opportunistic enough to figure out how to game this system. And a number have, aiming to maintain a short-term illusion of profitability just long enough to cash in their options, or sitting as directors on each others boards and voting each other big bonuses based on meeting routine goals. Others—less opportunistic—have resisted the call.

There are many reasons to believe, right now, that many businesses are ethically broken, and that substantial changes are needed in firm structure, governance (e.g. the composition and duties of the Boards), and regulation to get businesses back on track. But **the reason firms are ethically broken is not because they automatically "profit maximize**." They don't. Instead, the belief in "**economic man" and narrow goals has itself served, over time**, to **corrupt earlier notions of business responsibility**, in a sort of **self- fulfilling prophecy**.

A firm is not made up of one individual, with one goal. Rather, it is made up of executives, managers, and workers engaged in a joint activity, embedded in relations with suppliers, customers, shareholders, creditors, communities, governments, the natural environment, and so on. The fields of business management, organizational behavior, and economic sociology would have far less work to do, of course, if businesses were as simple as conventional economics assumes them to be. Business ethicists have plenty of work cut out for them in investigating how businesses can best be structured to carry out their social and environmental responsibilities (Paine 2002). Neoclassical economic dogmas, however, should not be allowed to stand in the way.

Of course, it may be granted that individual people and individual firms may be essentially human and social, but then argued that the market is the ultimate impersonal mechanism.

Markets

Don't the forces of market competition demand that firms squeeze out every last penny of profit, or they will go out of business? Doesn’t market competition, in itself, reinforce dog-eat-dog competition, values of greed and self-interest, and a race to the bottom on social and environmental protections? There are two flaws in this argument.

First, markets are not, in fact, nearly as competitive as portrayed in the abstract, mechanical model. Wal-Mart, ExxonMobil, IBM, Verizon, Microsoft, and the like are hardly the sort of anonymous, powerless companies that populate the neoclassical theory of perfect competition. The economic conditions they face do not dictate their decisions to them: They normally operate with some “slack”—that is, some excess of revenues over strictly necessary expenses. This slack gives them some room for discretion. They may, as discussed above, pay outlandish salaries to their CEOs—or build sumptuous headquarters, or go on acquisitions binges, or pour money into political campaigns. Or they may raise the wages of their lowest-paid workers, "green" their company, start a company day care center, or invest in impoverished communities. Some of these positive sorts of actions may also, of course, be profitable, but the point here is that with some "slack," they could also be accomplished even if they are only neutral or somewhat costly. Since many businesses are not on a razor's edge of competition, their decisions can be made with some discretion. This opens the possibility of realizing that business practices are complex and laden with ethical possibilities and ramifications.

Second, the idea that markets are somehow mechanical also assumes that "the market" somehow exists "it itself," separable from society and government, and separable from more cooperative social values such as trust and cooperation. Considered from a different point of view, **market interactions can be seen to be entirely dependent on values of trust and cooperation, systems of social mores, and government laws and regulations.** Neoclassical economists imagine that perfectly competitive markets can run well "on their own" because of subsidiary (and often well-hidden) assumptions that actors are perfectly rational, perfectly informed, have perfect foresight about the future, and trade all goods that are relevant for well being. In the real world, in contrast, there are in fact symbiotic relationships between social values and market values, and between governmental activity and market activity.

In order for a trade to take place, for example, the trading partners have to trust each other—that is, trust that the items being exchanged have the value that is claimed for them. Because actors in real life do not possess "perfect information," this requires ethical norms of honesty, backed up by social institutions such as business reputations, ratings bureaus, government regulations concerning disclosure or product quality, and the courts. Market exchange also requires a physical environment that is not unduly polluted or depleted, again requiring coordinated social and political action. The more honest and considerate trading partners are—the more they see their exchange as a cooperative endeavor to benefit both parties and society, rather than a selfish grab—the more smoothly markets can run. Were people to generally display no concern for social cohesion, ethics, or responsibility, and display pure opportunism at every turn, then every economic transaction would need to be tightly policed...and then someone would have to police those doing this policing, and on ad infinitum.

**Take away a concern for ethics, and leave markets to "self-regulate," and the result is a train wreck**—as we have learned from the 2008-2009 (and ongoing) financial crisis. Everyone from mortgage brokers to lending institutions to rating agencies followed the neoclassical advice to pursue self-interest, and the result was not market bliss, but market disaster. And while neoclassical economics says that agents are autonomous and rational in their decision-making, the financial crisis has yielded plenty of evidence to the contrary. Asset markets, including markets for housing and financial instruments, are very sensitive to social beliefs about the value of the asset involved.8 People will often buy an asset based not on some rational calculation of its fundamental worth, but because they have confidence that other people believe that the asset is valuable. As the field of behavioral finance investigates, such herd behavior, along with emotional responses such as excitement and overweening optimism, are key elements in the formation of speculative bubbles such as the one we witnessed in the U.S. housing market.

Market behavior, then, is not something separate from the social behavior of emotional, embodied, interconnected human beings, but simply another variant of it. Ethical approaches, and coordinated, community or governmental forms of management relevant for other aspects of social life are equally relevant to economic life.

#### This is NOT naturalization of the “workplace” – it is a descriptively true statement. If the alternative reconceptualizes the world away from a work economy in its entirety, it gets overrun by corporations with overwhelming power.

Ikoro 21

(Chima Ikoro is the community organizing editor at the Weekly. 8-18-21, Mutual Aid Projects May Soon Run up Against Bureaucratic Barriers, Southside Weekly, <https://southsideweekly.com/mutual-aid-projects-may-soon-run-up-against-bureaucratic-barriers/>, JKS)

On its face, mutual aid would seem to have no downside, but as organizers have learned, there are hidden roadblocks that make the work hard. In some cases, groups that have provided free assistance to community members have even been criminalized by the police. In one example, police and City inspectors served the Chicago Freedom School (CFS) with a cease-and-desist order last year for providing food to protestors after they became trapped downtown following the George Floyd protests in the Loop on May 30, 2020. Inspectors claimed that by distributing food, CFS was in violation of their business license. Although the City settled and eventually agreed to rescind the cease-and-desist order, this act was still a violent and egregious effort to stop community members from simply helping each other. In 2019, the National Law Center on Homelessness and Poverty released an annual report that detailed, among other things, changes in restrictions on food sharing. This report stated that although homelessness is on the rise, more and more cities are creating laws that discourage food sharing. In 2018, twelve people were charged with misdemeanors for distributing food to houseless people in El Cajon, California. A municipal code in El Cajon prohibits food sharing in public places. The year prior, seven people were arrested in Tampa, Florida for similar charges, and a woman was ticketed for feeding houseless persons in Atlanta later that year. If criminalizing the sharing of food didn’t pose a high-enough hurdle for organizers, redistributing funds has its own set of complications as well. If an ad hoc mutual aid group is not registered as a 501(c)(3) nonprofit through the IRS the individual(s) of record receiving the funds (through Venmo, Paypal, or some other means) are liable to be taxed for money received as donations. The process to complete the paperwork and meet the requirements can be tedious and riddled with caveats. According to the IRS, an organization that is tax-exempt as a 501(c)(3) cannot be an “action organization.” In other words, supporting or influencing policy changes and legislation, as well as supporting or rejecting political candidates, cannot be a part of such an organization’s work. This would seem to pose a potential problem for many politically engaged mutual aid projects. But the process of obtaining 501(c)(3) status can be more laborious than upholding its rules. Femdot, a rapper from north Chicago and the south suburbs, is the founder and director of operations for Delacreme Scholars, a nonprofit organization.

#### Case is a DA – no way to solve short-term exploitation produced by the fissured firm. That was on case. AND, their refusal of organizational coherence is impact turned by all of our arguments about coordinating economic activity being good – unions and collective action are an essential form of organizing power that prevent exploitation. AND, targeting state programs and worker reforms is a more effective mobilization than the alt.

Wuest 20

(Joanna Wuest holds the Fund for Reunion–Cotsen Postdoctoral Fellowship in LGBT Studies and is a lecturer at Princeton University. 12-16-20, Mutual Aid Can’t Do It Alone, The Nation, <https://www.thenation.com/article/society/mutual-aid-pandemic-covid/>, JKS)

This all set the stage for the New Left’s intense suspicions of the state—and a pivot to practices of community care. The Black Panther Party for Self-Defense was an exemplar of this tradition. Cofounders Huey P. Newton and Bobby Seale grounded the party’s work in nearly two dozen service-to-the-people survival programs, the corollary of a broader agenda to educate, organize, and foment revolutionary activity. As Newton recounted, such programs were meant to illuminate capitalism’s inability to fulfill the people’s daily needs. One of the most effective of these projects was the Free for Children breakfast program. Within a year of its launch in 1969, the Panthers had fed over 20,000 youths in 19 cities. The program was so successful that it was mimicked by California Governor Ronald Reagan, who expanded the state’s nutrition assistance programs to counter the Black Panthers’ influence. The Panthers’ free breakfast brigade is still remembered fondly; this year Representative Alexandria Ocasio-Cortez of New York recalled its legacy, comparing her office’s Covid-19 relief outreach to the breakfast program. But admirers of the Panthers often overstate the impact of their undeniably noble work. Despite her claim that the Panthers pressured the federal government to authorize a free breakfast program in 1975, the Department of Agriculture’s Food and Nutrition Service rolled out the first of several pilot programs three years before the Panthers’. (It was made permanent in the year Ocasio-Cortez cited.) Since 1946, the department has been offering its free and reduced-price National School Lunch program, a replacement for a patchwork array of volunteer ventures. Still, much more important than debates over which came first are the issues of scale and routes toward systemic reform. While the Panthers fed an astounding number of children across an impressive geographic range, their 1969 record was dwarfed by the more than 500,000 kids the federal government served free and reduced-price breakfasts the following year. (The program currently feeds 14 million children.) Compared with the suite of aid programs launched by the Great Society and the War on Poverty, the Panthers’ service-to-the-people projects were a drop in the bucket. But scale wasn’t their only goal. Unlike organizers of the March on Washington for Jobs and Freedom like A. Philip Randolph and Bayard Rustin—who conjoined labor, civil rights, and demands for a federal minimum wage and jobs program—the Panthers were interested in building dual power institutions that would one day compete with the state. As party member Lorenzo Kom’boa Ervin explained, their aim was to bypass the state by building “our communities into dual power communes, from which we can wage a protracted struggle with capitalism and its agents.” But as the Panthers’ influence waned, an increasing number of self-styled community leaders became integrated into a political and entrepreneurial elite that largely neglected policies that would materially benefit the working-class Black population. Some would even come to assist a revanchist capitalist class in pillaging the welfare state and breaking the back of labor. There is a striking parallel between these developments and the trajectory of 19th century ethnically organized mutual aid outfits and related small-business ventures, which just as often evolved into capitalist enterprises and municipal political machines as they did vehicles for reform. And while a handful of those groups paved the way for strong unions and welfare policies, Black power came onto the scene at a time when the American left was enervated and there were few similar opportunities for egalitarian influence. A left-wing politics of mutual aid and self-care gave way to accommodation and brokerage. By the late 20th century, liberals pushed for a more limited deployment of the state, inaugurating the practice of leasing out state functions to private entities like nonprofits. By the late 1970s, an all-out assault on labor and the welfare state began to roll back 20th-century workers’ wins. As the United States went into lockdown last spring, the country entered a pandemic-induced recession with scant social protections. Faced with a hollowed-out welfare state and inadequate relief from the federal government’s initial stimulus, Americans had no choice but to rely on the generosity of their neighbors, friends, and colleagues. Since March, people from weekend volunteers to full-time anarchists have done extraordinary things to distribute food staples and provide shelter for those who found themselves hungry and homeless. Still, given that nearly a quarter of American households with children are carrying rental debt and that a permanent exodus of the poor and working class from major urban hubs is underway, such efforts are confined mainly to the margins. Weathering the current crisis requires nurturing useful hope while avoiding palliative delusions. That means ditching our magical thinking about the sustainability of those mass mobilizations of goodwill that make the nightly news and pepper the pages of left-wing periodicals (both of which neglect the fact that charitable giving actually plummets during recessions). It also means recognizing that crises are excellent opportunities for revanchist right-wing forces to further raze state institutions and slam the lid on cries for justice. When labor-left movements were strong and could afford to go on the offense, the Great Depression created an opening for reform. If there is a lesson from mutual aid’s role in these past triumphs, it is that such community work was subordinated to the tasks of invigorating trade unions and pushing the state to enact universal programs. Kropotkin was not wrong about our natural inclination to cooperate. But how we organize and nurture that cooperative instinct is crucial. A crisis can bring us together to rebuild durable structures for the collective good. It can also exacerbate the dog-eat-dog mentality that neoliberalism has cultivated for decades. Our country is coming to resemble a long-sought libertarian fantasy, with only atomized acts of compassion for those left out. We would do well to guard against this despotic individualism—the natural condition of the social without the state—and to be sober about what spurred this renaissance of mutual aid and what it portends.

#### Theories of debility are ableist – renders disability an affective, social state that is universally felt than a particular embodiment – and assessing ability as capacity and debility as incapacitated ensures ablenormative binaries that turn the aff

Inkle 15 – (Kay Inkle, disability activist, “debilitating times: compulsory ablebodiedness and white privilege in theory and practice” Feminist Review 111. Accessed August 29, 3018; EG)

A recent contribution to disability scholarship is the work of Jasbir Puar who argues for a conceptualisation of ‘debility’ in order to move beyond the problematic binary of disabled/ablebodied. She promises a theorisation that confronts ‘the debilitating aspects of neoliberalism’ (Puar, 2012, p. 149) alongside ‘a methodology that inhabits the intersection of disability studies, the affective turn and theories of posthumanism’ (ibid., p. 154). However, for me, Puar not only fails to deliver these promises, but also reiterates some of the fundamental problems of the social model in terms of the negation of the disabled body, and perpetuates ablebodied privilege. In her paper ‘Prognosis time’ Puar (2009, p. 166) argues for a move from disability to debility in order to ‘invite a deconstruction of what ability and capacity mean .… and to push for a broader politics of debility’. She argues for a politics of affect or hope that, significantly, are not tied to bodily capacity. She suggests that by removing identity from bodily capacity and locating it in a temporal framework of risk, prognosis and debility, a contemporaneous politics of transformation can be achieved. However, for me, Puar fails to achieve this, not least because as with the social model, in seeking a politics that is estranged from embodied experience she encounters a range of political and conceptual problems. For example, notwithstanding her attempt to escape the body, Puar’s conceptualisation of debility reinforces a materially based and dualistic framework of capacity and incapacity: ‘affective capacity … occupies a steady tension with its opposite, incapacity, or what I will refer to in this essay as “debility”’ (ibid., p. 162). Thus, debility is conflated with incapacity and therefore apparently functions in much the same way as impairment. Furthermore, while Puar argues that ‘capacity’ is not solely a property of the body, it is nonetheless tied to ‘body limits’ that include ‘incapacity, disability and debility’ (ibid., p. 163). Therefore, like impairment, capacity, incapacity and debility rely on an idealised norm, against which the disabled body is measured as lacking. It is unclear, then, how this conception of debility and incapacity offers anything more than are wording of disability and impairment since they appear to function in similar ways. Moreover, while claiming that these terms challenge dualistic categorisations Puar continues to position them in binary opposition to one another, for example capacity and incapacity. Throughout ‘Prognosis time’ Puar argues that ‘debility’ is not deployed simply as disability, but rather as a means of ‘deconstructing the presumed, taken-for-granted capacities-enabled status of abled-bodies’ (ibid., p.166).Thus,she suggeststhatherpurpose istointerrogate ablebodiednessratherthandisability. However, she illustrates debility first with an example of miners in Botswana, drawn from Livingston’s (2005) work, who gain physical disabilities as a result of injuries sustained in the mines. Second, she explores the ways in which capitalism and medicalisation work hand-in-hand to pathologise what Szasz (2007) refers to as ‘problems of living’ and which creates a lucrative market for ‘big pharma’ in the treatment of conditions such as depression and social anxiety disorder. Clearly, if a diagnosis of mental illness is considered a disability, and diagnoses are expanding, then there will be an increasing number of the population who can be considered debilitated or disabled by reason of mental illness. However, it is not clear how this interrogates ablebodiedness. Instead, this analysis seems to reinforce the conflation of disability and sickness, rather than explore the ablebodied norm. Moreover, this conflation illustrates how, as with the social model, Puar’s attempt to move beyond normative conceptions of disability continues to frame the disabled body as negative: as lacking, impaired or debilitated. Indeed, by illustrating debility with physical disability and mental illness, Puar shores up the medicalisation of physical/sensory/ intellectual disability as a state of ill-health rather than as a social identity or a non-normative form of embodiment. In her later paper ‘Coda’—which has the telling subtitle ‘the cost of getting better’—Puar again uses the term debility in ways that emerge from a negative conceptualisation of disability. However, in this paper debility is not defined as an interrogation of ablebodiedness but, rather, as a means to conceptualise a ‘slow death’ (Puar, 2012, p. 153), namely, those who are disadvantaged by global capitalism. Despite having previously rejected material or bodily notions of identity and capacity, Puar defines slow death in corporeal terms, first in relation to the bodies that are defined as expendable within global capitalism, and second in relation to medical capitalism’s continuing pathologisation of the human body and creation of pharmaceutical interventions. Disability, Puar asserts, ‘must be rethought in terms of precarious populations’ (ibid., p. 154). For Puar such precariousness is exemplified by people in debt. However, it is unclear how debt relates to disability in any meaningful way. For example, how does the experience o fdebt relate to the specific social and material exclusion that pewids experience, including institutional abuse and hate crimes? (Leonard Cheshire Disability, 2008; EHRC, 2010). And how does a refusal of the bodily nature of these experiences promote a greater understanding of them? Furthermore, universalising disability in this way does not undermine binary positions, or challenge structures of inequality, but merely increases the proportion of the population ascribed to the negative side of the binary. Binary oppositions permeate ‘Prognosis time’ both in terms of Puar’s conceptualisation of debility and her deployment of the ‘analytic power of conviviality’ (Puar, 2009, p. 168) as her politics of redress. She argues that conviviality ‘complicates how subjects are positioned’ and highlights ‘more fluid relations between capacity and debility’ (ibid., p. 168). But this merely reinforces capacity and debility as discreet, opposing positions that can be mediated, rather than transformed by a politics of conviviality. This is illustrated at the end of the paper where Puar asserts that conviviality exposes ‘the instability of the divisions between capacity-endowed and debility-laden bodies’ (ibid., p. 169). However, by re-iterating the binaries between bodies that are ‘able’ (capacity-endowed) and disabled (debility-laden), which she claims to challenge, Puar merely shores up the status of these as inevitable, defining categorisations. In ‘Coda’, Puar (2012) again sets out to use affect as an alternative to identity politics and to operationalise the concept of debility to remove identity from the body. Instead of identity she argues for ‘capacity’ as ‘a source of generative affective politics’ (Puar, 2012, p. 156). Thus, she attempts to separate the body and corporeal identifications from politics, not unlike the way in which the social model attempts to separate the body from society. This creates a paradox where debility is set against capacity in a binary opposition, and capacity is seen as the means of redress for debility: ‘the subject of redress and grievance thus functions here as a recapacitation of a debilitated body’ (ibid., p. 152). It is unclear what recapacitation means in this context; it may be an expression of agency yet, if so, it is based on the presumption that disabled or debilitated bodies need to be endowed with agency via the benefice of a wider, that is, non-disability focused, paqolitics. As such, recapacitation functions like rehabilitation where those who are debilitated are ‘made better’ on the terms of those with political power and privilege. Thus, like the social model, Puar ultimately reinforces the hierarchy of bodies and fails to challenge the underpinning normative structure of them.

#### Debility frames evacuate agency from those who see vulnerability as mobilizing, not debilitating

Basu 15 – Dr. Maitrayee Basu has a PhD in Journalism and Culture. Studied at the London School of Economics and works at Middlesex University. “[Debility and Frailty – on whose terms?](https://femrev.wordpress.com/2015/11/25/debility-and-frailty-on-whose-terms/)” Published November 25, 2015. Accessed August 29, 2018. (<https://femrev.wordpress.com/2015/11/25/debility-and-frailty-on-whose-terms/>; EG)

Feminist Review Issue 111, themed ‘Debility and Frailty’ was published earlier this month. In this blogpost, Yasmin Gunaratnam draws out the key conceptual and theoretical ways in which this issue of the journal discusses disability and its intersectional living, cultural representation and geopolitics. Our call for papers for the new Feminist Review themed issue on “Debility and Frailty” took some of its inspiration from Nasa Begum’s [article](http://www.palgrave-journals.com/fr/journal/v40/n1/full/fr19926a.html)“Disabled Women and the Feminist Agenda”, published in Feminist Reviewin 1992. Disability activist [Begum](http://www.theguardian.com/society/2011/jun/22/nasa-begum-obituary), who died in 2011, demanded that feminists give attention to how the lives and concerns of disabled people are marginalised in both feminist and disability politics: “Writing as an Asian disabled woman I want to open up a debate about the position of disabled women and demand that a concerted effort is made to ensure that our needs, wishes and aspirations are incorporated into all feminist debates” (p.70). We hoped that more than two decades later, a themed issue of the journal might build upon Begum’s demands and provide further opportunities to discuss disability and its intersectional living, cultural representation and geopolitics. Although we invited contributions on both “debility” and “frailty”, most of the papers in the issue have taken up matters of debility – a category radicalised from its heavily medical encodings by those in critical disability studies, history and feminism. The term has been used by the medical historian [Julie Livingston](http://www.iupress.indiana.edu/product_info.php?products_id=181872) to refer to ‘the impairment, lack, or loss of certain bodily abilities’ (2005, p.113). More recently, the feminist scholar and queer theorist Jasbir Puar ([2012](http://www.jasbirpuar.com/assets/The-Cost-of-Getting-Better.pdf)) has elaborated on Livingston’s framing of the concept, and it is Puar’s work that has generated much interest among our contributors. For Puar, the relentless pursuit of profit creates debility through the slow depletion of marginalized populations. At the same time anxieties about health, disability and needs for care are financially exploited. Puar’s complex analysis investigates what is at stake in the demand for bodily capacity and also how new technologies (such as those that calculate our risks of disease) are redistributing the meaning of health, disease and disability so that the boundaries between disabled and non-disabled bodies are insecure. “The political mandate behind such … a move from disability to debility” Puar writes, “would not be to disavow the crucial political gains enabled by disability activists globally, but to invite a deconstruction of what ability and capacity mean, affective and otherwise, and to push for a broader politics of debility that destabilizes the seamless production of abled-bodies in relation to disability.” (p. 166). Remarking on our aspiration to consider both of the terms debility and frailty in the themed issue, Margrit Shildrik suggests that, “One might well argue that frailty remains better grounded in lived experience, that it allows us to face the differences of ageing or ill-health head on.” (p.13). Shildrik’s article “living on; not getting better”, with a focus upon British austerity politics, questions whether the concept of debility is any more useful experientially, politically and empirically than disability. In proposing a “disability politics of transness”, Alexandre Baril feels that the concept of debility can be useful in developing a composite or “assemblage” model, which recognises that the experience of transness can sometimes be debilitating. Baril ventures, “The application of tools from disability studies to trans issues in the proposed assemblage not only uncovers cisnormativity in disability movements, but also denounces ableism in trans movements.” (p.37). In her essay on taking the play that she wrote about her disabled son to India – “Don’t Wake Me: The Ballad of Nihal Armstrong” – Rahila Gupta remains uncertain about the political value of either of the terms debility or frailty. “Both terms imply weakness, brittleness, delicacy” Gupta feels, “connotations that take away agency from disabled people and emphasise their need for care and dependency and perhaps reflect the carer’s perspective.” For Anna Hickey-Moody, Puar’s conceptualisation of debility risks erasing differences of sensation, time and affect between bodies. She turns to feminist new materialist theory and arts practices with people with intellectual disabilities to demonstrate how such methods of feminist practice can become “a form of activism that allows us to bring out and appreciate modes of being and practices of relationality that are not yet perceptible or, if they are perceptible and visible, are often undervalued.” (p.160) Despite a seeming reluctance to investigate how “frailty” as a category might contribute to feminist projects, as editors of the issue we felt that there is a need for more critical discussion of the term, especially its gendered connotations and roots. In her research for the issue, Feminist Review editor Sadie Wearing came across a fascinating text, The Aegis of Life from 1830 (already by then in its 20th edition) in the British Library. The Aegis of Life is a vivid example of the overlapping of anxieties over sexuality and gendered expressions of productivity and fitness within the concepts of frailty and debility. These find expression in the history of sexuality in the equation of (sexual) debility and (human) frailty, with forms of sexual dysfunction caused by (among other things, including ‘intense study’) indulgence in ‘self-abuse’. More generally, as well as drawing attention to the historical legacy of words and signification, we would like to know more about what might be happening in the apparent feminist reluctance, or at least ambivalence, in engaging with frailty and its associations with bodily weakness, susceptibility and a wearing away? Is there a risk that frailty can become an abjected other of debility? And if so, then with what consequences?

#### We must call for state responsibility for social provisioning and care. An economics of *collective* well-being must break with the neoliberal minimalist state.

Sheila **NEYSMITH** Professor and Associate Dean of Research, Faculty of Social Work @ University of Toronto **ET AL** ’**12** *Beyond Caring Labour to Provisioning Work* [Additional Authors: MARGE REITSMA-STREET Professor of policy and social work in the Faculty of Human and Social Development @ Victoria, STEPHANIE BAKER COLLINS Social Work @ Victoria, AND ELAINE PORTERwith Judy Cerny and Sandra Tam

p. 149-162

In chapter 2 we used excerpts from 'Bread and Roses' to signal themes that we considered central to the dilemmas that women face as they strive to provision for those with whom they have relationships, of responsibility. The fact that these well-known words are meaningful today signals the troubling persistence of the shape of work in women's lives. Bread is needed, and thus so are the means for acquiring it; the procurement of resources through precarious employment, demeaning social assistance requirements, and the informal labour market of many participants meant 'sweating from birth until life closes' just to make ends meet. However, participants also talked about the work they did that was associated with other dimensions of the provisioning responsibilities that they carried: the hours spent doing caring labour, volunteer work, maintaining health, ensuring safety, and making claims for themselves and others. These are documented, often in graphic detail, in the preceding chapters. This work, and the social significance of it, is far more than is usually captured under the apparently polar opposite terms of breadwinner and caring. As the data reveal, the former is but a small part of the work women do. Incorporating caregiving into the picture contributes to an important conceptual expansion. Nevertheless, much of the range and complexity of women's work remained below the surface, unnamed and undocumented. The research that informs this book set out to map this territory in some detail.

To pry open the concept of work, its meaning and worth, from the confines of the market, we began with the concept of provisioning, a term retrieved from an earlier approach to economics that focused on how humans materially provided for themselves. This wider approach to economics contrasts with its current definition as the allocation of scarce resources to satisfy wants within a market economy. Feminist economists such as Nelson (1993) and Power (2004) have revitalized the term to expose all the work that women do that is uncounted in the market economy. An important assumption in these writings is that such work is central, not peripheral, to economic life in the older sense of the word.(Figart, 2007). Caring labour, household labour, and volunteer work are arenas of activity that have so far received the most documentation. To go beyond these established arenas into more unexplored areas, we followed pathways of responsibilities associated with relationship trails as we recorded individual and collective provisioning work that was connected to family, friends, neighbours, and community organizations.

After a careful assessment of this provisioning terrain, the question remains: so where are the roses? What was envisioned by the marchers as they talked of 'life's glories'? Flow can they be realized? Today such ideas might be captured by phrases such as well-being or quality of life. Admittedly, they are contestable conceptual tools, but they do have the virtue of encompassing more than merely income as measures of desirable outcomes in life. Glimmers of some of the invisible work done by individuals and collectivities of women seen when women's relationships are used as the compass, show the myriad ways in which women contribute to social reproduction, adding value to the lives of those for whom they have taken responsibility. Our point is that these are not sideshows around the central characters of the labour market. If the drama is about quality of life, the storyline consists of activities that are attached to relationships of responsibility, and paid work is one segment of it. Nevertheless, it cannot be ignored that in a market economy paid work is reified and many essentials of life are commodified. The resulting injustice is that having money would have allowed our participants to circumvent a lot of the relentless work they had to do that was not recognized or valued.

The plot thickens as we turn our attention to the script of neoliberal social policies that write off the provisioning of women as a free good,without considering its true costs and benefits. Feminist political economy has issued the proviso that without women's contribution to the economy, the burdens of social reproduction fall disproportionately on marginalized populations, and because the capitalist class benefits from this oppression, the state needs to intervene and support the essential work of women. Our study furthers arguments that the terms of citizenship need to be widened (Howell, 2007; Isin & Nielson, 2008; Plummer, 2004; Stasiulis & Bakan, 2003) in ways that recognize the contributions and agency of women individually and collectively, in private as well as public spaces. Currently, social policies reward the full rights of citizenship to those who are fortunate enough to land the market-player parts - although it could be argued that some of these characters should be cast as villains in the citizenship drama.

The data from the research sites presented in the previous chapters suggest a number of important theoretical ideas that are discussed in this chapter. These we see as ingredients, the nutrients needed if the rose of citizenship is to be realized for women such as the participants in this study. We also indicate in this chapter methodological points that we think were conducive to revealing the many dimensions of provisioning. The chapter concludes by rejecting ideas of citizenship that are limited to market notions of rights and responsibilities and/or that recognize only engagement in formal voluntary organizations as participation in civil society. It presents a model of social provisioning in which the state is positioned as a key player with institutional, economic, and ideological power to shape the lives of its citizens.

Dimensions of Women's Working Lives

In chapter 2 we referred to the range of provisioning responsibilities that women carried. This general term was specified in chapters 3 and 4. In the former we articulated two major domains (activities and strategies), each encompassing six different types of work done by the individuals we interviewed. In chapter 4 the work required to keep community groups going was revealed and organized into three domains. As the quotes highlighted, women's work does not fall into silos, although to facilitate the mapping of this work we classified the data into categories and organized them along dimensions labelled individual and collective provisioning. This approach highlighted the complexity, as well as the amount, of work done, and made visible the fact that, despite neoliberal discourse denying its existence, women carry provisioning responsibilities in collective as well as individual spaces, in public and private spheres. Consider these categories as bookmarks in a provisioning story that needs to be written more fully as the language to describe these domains becomes more accessible to women. As language and concepts are clarified and developed into models, we anticipate that the borders of provisioning domains will be permeable, in several aspects. In each chapter we underlined how the data make visible the existence of pathways, based on relationships of responsibility, between domains of work. This allowed us to track relationships without being stopped at the borders of family and/or paid work. Transgressing these borders revealed a range of relationships that could not be classified validly in one of the traditionally defined family, work, or volunteer spheres rather than another. It was not the sphere that determined the meaning of the relationship but rather the relationship that determined what responsibilities were assumed, how and why provisioning was done. As several of the quotes under transformative strategies suggest, participants speak of the desires and difficulties they face in negotiating their provisioning responsibilities, including those associated with commitment to the goals of the organization. They fulfil the responsibilities that these commitments entail through personal and organizational relationships. These trans-domain pathways follow relationships-, and thus costs and benefits travel along with persons on these pathways (Emirbayer, 1997). These connections must be built into theory and policy models if they are to support women.

Another key finding is a clearer understanding of how current boundaries associated with ideas of public and private spheres are powerful shapers of women's lives. Fortunately, there is now a rich theoretical literature on boundaries (see Howell & Mulligan, 2005; Lamont & Molnar, 2002, for a review; Yuval-Davis & Stoetzler, 2002) that helped in exploring participants' responses. Our point is that women's provisioning requires that women attempt to cross these barriers. As does Dorothy Smith (1990), we argue that these borders and boundaries have presence and power when they are operationalized into policies and programmes and their effects are documented. The analyses in the preceding chapters show how boundaries operate in ways that result in women having to negotiate them - yet another work demand. This work is not a direct provisioning activity but is a necessary strategy to further both individual and collective provisioning. In a neoliberal society the market, state, family, and civil society spheres are real in the sense that there are powerful social structures defining them. The boundaries can be as solid as concrete, requiring determined hammering to get through them (recall in chapter 3 a participant's list of the work she did in response to the questioning of a social assistance official). The boundaries can be spongy, seemingly penetrable, but are impermeable when pushed - as when the grandmother is chastised by her son for taking a mental/physical health break in the form of a walk rather than staying in the house to care for the grandfather. Others can best be compared to fencing where there are openings, but what is on the other side is difficult to discern - one might squeeze through and land on safe ground, or fall into an abyss of the unknown. For example, job training seems to promise a way out of poverty but our data and that of others suggest that it is more often a pathway to dead-end jobs with minimal pay. The work of figuring out the structure of boundaries and strategizing how to cross them is seldom recognized, or it gets named as something else when it is. For instance, finding out what is allowed, or not, under social assistance regulations is dubbed as 'exploiting the system'; setting limits on the demands of family for caring labour is called 'shirking family responsibilities.'

When well-being is equated with the market, employment, and individual consumption choices - and value is measured in dollars, collective spaces as arenas for support and action tend to fade from view. Ways of talking about these spaces - theories that capture their shape and activities - seem unnecessary when the dominant discourse is about markets, choice, and individual responsibility. In chapter 2 we noted how collective spaces where women could come together were disappearing. Funds to support them have diminished in the last decade, and those that remain are tightly hooked to delivering services, with accompanying accountability criteria. All chapters show that services are an important component of the resources that women access to meet their provisioning responsibilities.

Our concern was that the raison d'etre of these organizations was being narrowed to that of a service agency - carrying on functions performed traditionally by the state or voluntary sector. Community capacity-building in any form was being squeezed out as funding criteria favoured short-term service programmes. We have purposefully documented the work that occurs in these spaces, to provide empirical evidence that there is much work in keeping groups going that is not counted in the costs of providing services. However, our concern goes beyond a call to recognize undocumented work, as important as that is. Viewing these events through a critical feminist lens suggests that these collective spaces are being shut down because they counter a market ethos and thus are seen to hinder the efficient operation of a market economy. In fact, it is in these collective spaces that women's provisioning is supported in order to keep individuals from placing even greater demands on the state and the economy. Using a methodology that can document complexity is a critical ingredient in research that is aimed at building theory. While analysing data from multiple sites, one is constantly reminded of its complexity, how different types of provisioning work are related, and how classification schemes will change over time as new data are entered. We agree with McCall (2005) that categories are methodologically useful for documenting complexity - as long as they are recognized as place holders that reflect theoretical assumptions. In chapter 3 we noted how the final categories of provisioning activities and strategies used by participants were the result of coding that started separately within a few sites, followed by the development of cross-site draft categories to be used to code new data in these and the other sites. After all data were collected, two people very familiar with the sites examined codes and content, suggesting final naming for the categories of individual work. The naming of organizational work was also finally determined only after all the data had been collected and community advisory groups had debated the findings. Research team members then agreed upon the naming of the categories. Assuming the position that categories are best regarded as provisional, useful for a period of time, but needing to be modified as phenomena are better understood, the types of provisioning, and their names, done by women as individuals and as members of collectivities will change, we expect, as their breadth and depth become better understood. Furthermore, our understanding of how relationships shape the provisioning responsibilities carried by women is in its infancy. Hopefully the categories - the descriptors we are using, will soon be outgrown as research and theory about women's provisioning grow and mature.

Our choice of sites and approach to analysis were influenced by considerations of important structural inequalities and the effects of 'spheres' and their boundaries on the complexity of the work that women do and the relationships they maintain. Participants were purposefully sampled across six sites to reflect differences in geography, age, income, and organizational type. The women who participated in this research came from very different social locations. They brought to their provisioning responsibilities different priorities, experiences, and identities. The realities they faced differed. A woman of eighty-five with several chronic health conditions had struggles that were different from those of the refugee mother trying to raise a pre-schooler in a high-crime area. Thus, the specifics of their provisioning activities and the strategies they used to provide differed; the collective spaces that they found useful and to which they contributed also differed.

In recent years, the concept of intersectionality has been used to capture how this diversity affects people's lives and actions (see McCall, 2005; Simien, 2007). However, the concept can seem ambiguous, because it has been used in different ways. It is frequently employed to emphasize the fact that individuals have multiple dimensions to their identities, although many are rooted in social structures. For instance, an individual participant in our research might be young and poor, have one child, and be a second-generation immigrant from Jamaica. The attributes used to describe the participant in the previous sentence reflect both the diversity of individuals and the structural dimensions that define privilege and marginalization in Canadian society. However, an individual embodies only some aspects of each. Depending on what these are and how they come together, their relative importance/ influence will differ in people's lives. These intersections affect work and relationships and how they vary across social locations. It is important to articulate in theory and policy which dimensions of privilege and oppression are relevant, and why and determine their relative importance vis-a-vis each other in affecting the quality of life of different groups of citizens.

Challenging Citizenship Claims

Discussions of citizenship reappeared in the eighties as global movements of goods and peoples brought into question the meaning of national borders and the entitlements of those who resided within them. Although this discussion originated in concerns about the meaning and power of nation states when flows of capital no longer recognize national borders, the debate has widened to include what constitutes the basis of citizenship claims and who can claim them. The 'what' is defined in terms of rights and responsibilities, while the 'who' can be found in policies on immigration and refugees (Dobrowolsky, 2008; Yuval-Davis, Anthias, & Kofman, 2005), transient workers (Sharma, 2006), and international caring labour chains (Browne & Braun 2008; Hochschild, 2000b). As the data from Jane's Place (chapter 6) revealed, responsibilities and accompanying funds flow regularly through relationships to kin in other countries. However, since most of the participants in our study were Canadian residents, in the following paragraphs we limit our focus to explicating how their rights and responsibilities were filtered through gendered ideas of what constitutes citizen-like activities.

Marshall's classic post-Second World War articulation of the social rights of citizenship within a welfare state underwent a sea change during the eighties. Marshall's welfare state citizen enjoyed certain entitlements based on the fact that 'he' lived within certain national borders, that 'he' belonged to a nation state. However, Marshall's idea of civil, political, and social rights, despite their social policy strengths, were tied to notions of paid work (Marshall, 1950; Marshall & Botto- more, 1992). State benefits frequently stemmed from this connection. Women's work, particularly unpaid caring labour, is excluded in debates and policies rooted in such a framework (Cohen & Pulkingham, 2009; Lister, 2003).

During the retrenchment of the 1980s, the importance of this exclusion of women's work became pronounced as neoliberal ideology took hold and the idea of an active state, along with funding, retreated. The entitlement-bearing citizen was transformed into a more active citizen, and responsibilities were given more emphasis than rights (see, for example, Etzioni, 1995). The consequences fell disproportionately on women, whether as sole support mothers or as members and staff of different types of publicly funded organizations (Dobrowolsky, 2008; Dobrowolsky & Jenson, 2004; Jenson & Phillips, 2001). The decimation of these organizations resulting from the rise of neoliberalism silenced their critique of its effects on women. Canadian women have won some visibility of their rights over the years - perhaps highlighted by the insertion of equality clauses into the Charter of Rights and Freedoms in 1982. However, even here, rights and claims focus on the individual. Disappearing in such debates is the responsibility of the state to meet the needs of its citizens. So dominant is the discourse of individual responsibility that it is difficult to see what/who fades from view in such discussions. As chapters 4 and 9 show, collectivities offer critical spaces for women to understand the actions of the state.

The new active citizen is expected to shoulder responsibilities by participating in paid work and in civil society. The effects of this expectation on the well-being of women on social assistance is well documented (Gazso, 2009; Little & Morrison, 1999). In a contorted twist of logic, for those on social assistance who could not find employment, volunteer activity was defined as a substitute arena for participation. However, much formal volunteering privileges a culture characteristic of affluence rather than the informal volunteering that is more characteristic of people with low incomes (Williams, 2003, as cited in Orton, 2006, p. 255). Most of the arenas in which our participants were involved as members and volunteers were viable options for them, because these organizations also provided material resources. In a nutshell, we are arguing that it is only the privileged who can afford to join organizations that do not help citizens meet their practical needs as well as addressing their strategic interests. If participation in civil society is limited to NGOs that separate the two, then the voluntary sector is yet another sphere with concrete borders that shut out women, such as those in this study, and thereby disconnect women from exercising their strategic interests. This is what social exclusion looks like locally.

Democracy allows for different ideals of civic life and many forms of engagement in different spaces for different people. Participation in meaningful groups exercising some form of democracy can take place in more arenas than party politics or formal voluntary organizations. A variety of groups that can be missed in such narrow definitions may include self-help groups such as NIMBY (not-in-my-back-yard) local interests (Schudson, 2006). Regardless of whether or not one agrees with the goals of such groups, they can be places in which to practise democracy and learn the skills of communication and working together. A variety of spaces are needed to facilitate learning that builds on the diverse capacities of individuals and communities. Even some seemingly therapy-focused groups, such as self-help networks, might lead to turning private troubles into public issues, although we lack empirical evidence showing how and when such private-public connections are made.

As previous chapters (particularly chapters 4 and 9) concluded, the collectivities we studied can foster the potential for making connections between individual problems and larger social forces. The family networks in which women with low incomes play key supportive roles are not likely to have the kinds of resources that can sustain them, and the people who rely on them and may drain their resources. The work of Dominguez and Watkins (2003) shows that ties with professionals in agencies were able to offer both instrumental and emotional support and that the latter proved to be unexpectedly robust. Our research also looks at how women from low-income neighbourhoods build relationships with people in community agencies (Fuller et al., 2008). Even when women were participating in the formal social service sector, their motivations for participation meshed material interests with a host of other strategic interests that can be interpreted as showing agency (Fuller, Kershaw, & Pulkingham, 2008) or the balancing of social support and social leveraging (Dominquez & Watson, 2003), even in relatively hostile environments for doing so.

Our data on women's work in collectivities allowed us to see that the provisioning of the social space was the catalytic source for women's ability to realize some of 'life's glories.' The organizations we studied made special efforts to involve participants in organizational processes and decision making, and thus to minimize the extent of differences among members. As a result, we could see that it was the interchanges among these women that had a catalytic effect on their growth. Change cannot happen if individuals are isolated by poverty or other types of social exclusion. Others are needed to imagine and discuss alternatives. In such arenas, 1 + 1 + 1 does not equal 3; interaction effects among participants result in conversations that are exponential - accompanied by the potential that different possibilities will emerge as a result.

Unfortunately, as we argued in chapter 9, current policy in Canada is following a model that equates not-for-profits with for-profit firms, that expects voluntary organizations to become more business-like so that they can take on the responsibilities being off-lQaded onto them from government (Stivers, 2002, as cited in Campbell, 2005, p. 702). Closing down collective spaces means cutting off these relationship pathways and the associated linkages that make transformation possible. We argue that what is needed is an examination of the capacity of groups such as those in the six research sites to bolster participation and engage in a critical analysis of what is happening to poor women.

Re-Enter the State to Assume Responsibility for Social Provisioning

The lens of provisioning used in the previous chapters showed that rights and responsibilities came together in the lives of women; the division between the two in theory and policy debates did not hold in lived experience, although the tension did. The provisioning responsibilities of women were shown to be extensive and often costly to their own welfare. Women talked poignantly, and with distress, about the shrinking of these spaces in which they could debate and practise negotiations of rights and responsibilities and examine how these affect their lives - and those for whom they carry provisioning responsibilities.

Because we collected data at both the individual and collective levels, we were able to trace the importance of the collectivities for women's well-being. When we discuss the term social provisioning, we do not use it to refer to the individual level, as Marilyn Power (2004) did in her discussion of the networks in which women provision. We endorse her premise that, in order to understand women's work, one needs to look at caring and unpaid labour as fundamental to economic activity; use well-being as a measure of economic success; analyse economic, political, and social processes and power relations; include ethical goals and values as an intrinsic part of the analysis; and interrogate differences by class, race /ethnicity, and other dimensions of inequality (Power, 2004). We hope that this was visible in the methodology and analyses throughout the book. Our rationale for keeping the term provisioning as central to our study reflects a policy focus in which the concept of social provisions is used to describe some of the responsibilities carried by an active state so that not everything is left to the so-called active citizen. An active state is essential if future cohorts of women are not to continue marching for bread and roses.

Of particular concern is the retreat of the state, as evidenced by the withdrawal of social provisions since the 1980s. At the same time that a North American and European discourse was taking hold about the development of civil society as a cornerstone for democracy, the power of nation states was being transformed by a globalized economy. During this time, the state increasingly abdicated responsibility for social provisioning on the one hand, while on the other, the particular types of actions that defined the active citizen, and the spaces within which participation was recognized, shrank. Those spaces in which women were participating and meeting their provisioning responsibilities were not seen as 'real' centres of civil society participation. Thus women were not seen as responsible active citizens. Their organizations were shut down, while the state withdrew supports, and voluntary agencies were turned into service providers. Such are the dynamics of oppression in that they undermine women as active citizens.

In order to enhance the well-being of citizens such as the women who participated in this study, the starting place is to recognize that low- income women carry many provisioning responsibilities. They are not scrambling to offload them. Many, but not all, are assumed willingly because they are tied to meaningful relationships. What is sought is recognition that these commitments, and the associated work, do exist with consequences for the women doing the provisioning! Defining non-employed people as dependents excludes them from entitlements that accompany those seen as contributing members of society - those who are employed. Likewise, thinking in terms of what types of provisioning women do does not position individuals as simply givers or receivers of care. The concept is more concerned with highlighting how responsibilities flow along pathways of relationships.

Where women's rights are based on policies focused on getting women into low-paying jobs, women with provisioning relationships are just further burdened. It is the labour market that is the problem, not the women. Part of the answer is to establish policies that recognize that citizens live multi-dimensional lives. Paid work is privileged in a market economy because it is the arena for earning money - an activity that is valued and brings prestige. All other types of work are devalued. Thus employment policies are needed that modify the effects of this privilege. Currently, the contradictions between competing sets of demands can be avoided only by those women who have resources to buy some assistance with their unpaid work. The resulting inequities actually exacerbate the situation of poor women.

Gender-based incentives to promote equity have utilized Nancy Fraser's idea of the universal caregiver. This approach engages men in performing their fair share of caregiving if women are to succeed in the Fight for bread.' However, as Olson (2003) cogently argues, even if a universal caregiver approach informs an active state policy approach, operationalizing such a model in a market economy where democracy is usually equated with an individual's right to exercise choice does not easily happen, even when active labour legislation encourages it. For example, until the mid-nineties Sweden's parental leave policy had salary replacement rates of up to 94 per cent. Despite such a strong incentive, examination of the Swedish experience revealed that income-replacement policies were not sufficient to attract men in the same numbers as women to take care leaves. Labour market priorities seemed to dominate individual and household decision-making. In this case, it revealed the dynamic that individuals incur costs beyond lost wages when they interrupt their labour force careers and, by contrast, shows the plight of poor women whose 'careers' begin with the testing grounds of women's collective efforts.

Paid work will continue to be privileged as the most valued approach to acquiring the needed resources for living. This will not disappear in a market economy, but a provisioning state can provide key resources that are now available only to households with higher incomes. The areas of child and elder care come readily to mind. Numerous studies document the need and the models used within and across countries. In Canada, women's groups have repeatedly argued that a viable national childcare policy is essential to women's autonomy. Yet multiple campaigns to institute one have met with stiff resistance over the years. Instead, a patchwork of tax benefits and subsidies keeps reappearing under different names. A parallel scenario is repeatedly enacted around calls for a national home- and community-care policy for elderly persons. These policy examples illustrate how class privilege interlocks with gender, race, class, and age to oppress particular groups of Canadians. The holistic concept of provisioning suggests that future research, and policies based on it, follow women's relationship pathways as trails to understanding citizens' need for both T>read and roses.' Policies that position people as citizens who carry a range of individual and collective provisioning responsibilities would increase the capacity of women to choose to engage in various forms of participation, including politics. From such spaces, other possibilities can develop.

Conclusion

This book has focused on the provisioning work that women do. We have argued that this work is done as individuals and as members of collectivities. This work is tied to the responsibilities that women carry. No matter what the work is, or whether it is engaged in by choice or coercion, relationships are central. The sites in which the data were collected allowed us to explicate the amount and complexity of this provisioning work. Along with these empirical data from participants, each chapter interrogated the socio-political context within which individual and group-based provisioning was occurring. What becomes clear from a trans-site perspective is that the state continues to have a powerful presence in the lives of women like the participants in this study - and in the collectivities of which they were members. Funding policies hooked to narrow definitions of service programmes, and social assistance payments based on women positioned as part of a labour market pool, are technologies of ruling that regulate behaviour and suppress resistance.

In 2012, many of the premises of Marshall's welfare state, along with its gendered assumptions, no longer hold. What we support is the spirit, the commitment to collective well-being, that gave rise to it. Our concern about the current civil society / active citizen discourse is that it excludes segments of the population and loads responsibility onto individuals like our participants while letting the state elude its responsibility to do social provisioning. One should expect to look to the state for social provisions that enable, support, and in some cases relieve the provisioning work carried by citizens. The state has the power to intervene in all spheres, but in the current neoliberal regime support is limited to the market sector. Any illusions that the state has shrivelled in a market economy should have been wiped away after seeing state responses to the recession of 2008-9 when market forces seemed to be jeopardizing the welfare of several nation states. As noted in chapter 1, central governments were called on to infuse millions into financial and industrial markets. As this chapter is being written, it seems that the intervention did stabilize these sectors of the society. It is unnerving to witness how the types of behaviour that led to the crisis are reappearing - quite literally it is business as usual; the excesses are criticized but accepted as the price to be paid if a market economy is to grow. This is the political economic context within which low-income women struggle to meet their provisioning responsibilities. The point to be taken is that the character of the non-interventionist state in the neoliberal drama is a myth - a guise assumed until powerful market players call upon it to exercise the tremendous powers at its disposal. Those same powers can be used to promote the quality of life of all citizens.

#### Futurity is inevitable, it’s only a question of what kind — futurity isn’t naïve hope, it’s a response to material reality

Kuttner, PhD, 17 (Paul, associate director at University Neighborhood Partners, University of Utah“Futurism, Futurity, and the Importance of the Existential Imagination,” <http://culturalorganizing.org/futurism-futurity/>)

Organizers and activists also seem to be taking an increased interest in the future. In 2015, the Movement for Black Lives and Huffington Post launched an annual celebration of Black Futures Month, a remixing of Black History Month that calls on people to “seize the opportunity to change the course of history by shaping our future.” That same year, AK press put out Octavia’s Brood, an engrossing collection of SF short stories written by activists and organizers. Of course, social justice organizing is often driven by a vision of a future better than the one we live in. But something deeper is going on here: a recognition that the future, despite its intangibility, is directly impacting us today. Take US politics. The election campaign that lifted 45 to the presidency was premised largely on fear of the future. In his speeches and tweets, 45 conjured an imagined future in which the US is overrun by “terrorists,” “rapists,” and “criminals” from across our borders. In this racist, dystopian future, white people sacrifice power and safety amid hostile aliens. This future is not real in any concrete sense. And yet, it affects the present in multiple ways — increasing support for racist policies, emboldening white supremacist organizations, and igniting hate crimes, just to name a few. In this sense, the future is what Andrew Baldwin calls a “permanent virtuality,” unreal and yet ever-present.6 Scholars have taken to using the term futurity to explore these interactions between past, present, and future. From my reading, futurity refers to three main dynamics: The ways that the future is defined (or “rendered knowable”) through practices such as prediction, projection, imagination, prefiguration, and prophecy;7 The ways that the future impacts the present, for example through fear, hope, preparation, and preemption;8and The ways that our thoughts and actions in reference to the future make some futures more likely, and others less likely, to come about.9 In his book Cruising Utopia, José Esteban Muñoz proposes that queerness is a kind of futurity. “Queerness,” he writes in the book’s introduction, “is not yet here…Put another way, we are not yet queer.”10 Instead, he explains, queerness is an ideal. It is a utopian vision that can help us to see beyond our everyday restrictions ]] “straight time” — that sense that the present is natural and enduring — to suggest alternative futurities. The concept of futurity seems to have been most fully developed by Indigenous scholars and activists. As Native scholars have shown, settler colonialism (the kind of colonialism we have in the US, where the colonizer comes to stay) involves an ongoing project of erasure and replacement.11 After all, settler claims to the land in the Americas, the Pacific Islands, and elsewhere only make sense if the original inhabitants are gone. And, despite centuries of genocide, they are not. Part of the modern settler project, then, is to erase Indigenous peoples — if not physically (through policies that deny land, health care, etc.) or culturally (through blood quantum tests or the forced removal of children), then at least from popular consciousness. Movies, television shows, school curricula, political speeches, news reports, and other media relegate “the Indian” to our past — a sad chapter in history, perhaps, but nothing to concern ourselves with as we dream of the future. By erasing Indigenous people from the present and the future, these discourses advance the cause of what scholars like Eve Tuck call settler futurity. In other words, these discourses are premised on, and help to bring about, a future of endless settler dominance over the land and all that is on/of it.12 Indigenous communities, though, are (re)claiming the future — opening up space for indigenous futurities to flourish.13 To advance indigenous futurity is to assert, and takes steps to make possible, futures outside of settler colonialism. We can get glimpses of indigenous futurities in the social movement organizing of Idle No More, among the water protectors at Standing Rock, in the Indigenous media production of Indian and Cowboy, and in everyday assertions of Native culture and sovereignty. Noelani Goodyear-Kaʻōpua writes that, although they are often framed as relics of the past, Indigenous communities are actually at the front lines of the struggle to protect the future. Writing about Native Hawaiian efforts to defend cultural and natural resources, she notes that “When colonial discourses frame blockades at Newcastle or on Mauna a Wākea as obstructions on a march to “the future,” they miss the ways this kind of activism is actually protecting the possibilities of multiple futures.”14 This work is rooted deeply in Indigenous cultural practices and epistemologies, which, according to Hawaiian activist and blogger Bryan Kamaoli Kuwada, have always attended to both the past and the future. “The future is a realm we have inhabited for thousands of years. You cannot do otherwise when you rely on the land and sea to survive. All of our gathering practices and agricultural techniques, the patterned mat of loʻi kalo, the breath passing in and out of the loko iʻa, the Kū and Hina of picking plants are predicated on looking ahead. This ensures that the land is productive into the future, that the sea will still be abundant into the future, and that our people will still thrive into the future.”15 A Final Note When I was coming up in the world of social justice arts and organizing, much of the focus was on history. We studied how injustices like racism and colonialism were historically constructed. We learned how histories of activism and rebellion had been hidden, rewritten, and co-opted to reinforce the right of those in power to rule. We supported youth as they came to see themselves as part of long social movement traditions. This focus on the past was, and is, terribly important. At the same time, I am energized by what I see as a growing emphasis on the future as an arena of active struggle. Because that’s certainly how those in power see it. Wall street traders are gambling on our futures. Tech companies are redesigning our futures. Hollywood is whitewashing our futures. And all the while, unfettered capitalism is foreclosing so many healthy futures for this planet. Imagining alternative futures is, quite literally, a matter of life and death. The struggle for futurity is on, and as artists and cultural workers we are right in the middle of it, whether we know it or not. It’s time to accept the invitation of Bryan Kamaoli Kuwada: “We live in the future,” he writes. “Come join us.”16