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#### The affirmatives characterization of the “the (under)common socialities” that operate against “liberal sovereignty” perniciously inscribes a form of Western binarization that erases Indigenous republican struggle

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Reappraising a Political Theory of the American Borderlands The Republicans of Nacogdoches and its surrounding borderlands context offers a reminder of the centrality of popular political thought in the development of republican politics during the Age of Revolutions. While the project of Mexican Texas was short-lived, the movement behind the project illuminates the transnational components of revolutionary change, as well as the numerous political communities that undergirded it. Further, the Republicans of Nacogdoches offer an invaluable example of the ways in which marginalized actors negotiated their evolving political loyalties. By drawing from popular discursive objects, this article demonstrated that Indigenous, Mestizo, Creole, and White actors joined transnational revolutionary movements to pursue overlapping but distinct political programs. For Indigenous nations, the Republicans offered an opportunity to resist colonial expansion from both the United States and the Spanish crown. Comanche, Apache, and Carrizo actors were influential to the distribution of insurgent republican pamphlets in the U.S.-Mexico borderlands, but their contributions are missed if the field limits its attention to the bound texts speaking to SpanishAmerican emancipation from centers like Philadelphia and Mexico City. For Mestizo communities living on the border, the insurgency offered an opportunity to envision the emancipatory capacities of republican Mexico – a project that emphasized the religious, Indigenous, and plebeian components of revolutionary change. As the Jesus, Maria, y Jose broadside shows, religious interpretations of republican revolution were unique to insurgent Mexico, but the Nacogdoches movement adopted this rhetoric to better involve those living on Novohispanic soil. And for U.S. volunteers, primarily White agrarian actors, the Nacogdoches project offered a chance to act on their hemispheric commitments to revolutionary emancipation while reaping the rewards of colonial settlement. U.S. citizens were encouraged to join forces with the Nacogdoches volunteers and depicted as heroes fulfilling the role of the United States as arbiter of the republican revolutionary age in the Americas. These communities, from their seemingly disparate positionalities, together comprised the rise of transnational republican revolution in the U.S.- Mexico borderlands. While the Republicans of Nacogdoches were unique in bringing together such different groups, the ideological work behind their efforts were relatively commonplace in the early nineteenth-century United States. Actors living during the Age of Revolutions were regularly met with seemingly contrasting politics of subverting colonial powers while ensuring the survival of incipient American republics. This article argues that ideological code-switching emerged as a strategy that vernacularized overlapping investments in anti-colonial and neo-colonial politics. Namely, revolutionary groups appealed to anti-colonial politics to argue for the expulsion and subversion of European powers in the ‘New World’. At the same time, neo-colonial politics entered these conversations as a matter of selfpreservation – via arguments that Americans must expand, settle, extract, and thus, displace, to ensure emancipation from colonial subjection. Rather than approach these as contradictory principles, actors used hemispheric discourse to argue that Americans were exceptionally fit to maintain republican liberty under expansive conditions. These hemispheric characterizations began in the United States, as espoused by The Federalist, but grew to include virtually all the American revolutionary projects that emerged in the early nineteenth-century. The ‘Republicans of Nacogdoches’ were only one of many groups attempting to link their efforts with similar insurgencies in Bogota´, Buenos Aires, Caracas, and Saint Domingue. The U.S.-Mexico borderlands, however, do open unique questions regarding the way political theorists study – and distinguish – between the ‘west’ and ‘non-west’. By attending to popular print activity in Louisiana and Texas, I demonstrate that marginalized groups did not characterize their emancipatory ambitions along cleanly demarcated national or ideological boundaries. Rather, insurgents sought to move between contending revolutionary imaginaries within liminal national, historical, and racial spaces exposed to the ramifications of global colonial events. Movements like the ‘Republicans of Nacogdoches’ problematize lenses that emphasize the ‘non-west’ as a signifier of peoples, events, and ideas that developed beyond the scope of ‘western modernity’. Instead of attributing ‘non-western’ categories to certain texts and contexts, political theorists might look to popular movements that illustrate how marginalized groups understood themselves as operating within and beyond the regulatory powers of ‘western’ colonial structures and their reproduction through nation-building projects. In this case, the U.S.- Mexico borderlands provide an example of the ways ‘western’ and ‘non-western’ identities were blurred by Indigenous and Mestizo groups attempting to improve their political standing by intervening in the construction of an ostensibly postcolonial world.

#### The aff treats blackness as in but not of world order. They pose a structural conflict between ordering and sovereignty versus disordering, dispossession, and non-relationality. This narrative denies the world-making capacity of decolonization and the principle of self-determination.

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Just three years after Ghana’s achievement of independence, seventeen African states joined the United Nations, marking the high point of decolonization in the Black Atlantic world. In what would come to be called the year of Africa, the newly constituted African bloc in the United Nations successfully led the effort to secure passage of General Assembly resolution 1514, titled “Declaration on the Granting of Independence to Colonial Countries and Peoples.” The declaration described foreign rule as a violation of human rights, reiterated the right to self-determination, and called for the immediate end of all forms of colonial rule.1 Resolution 1514 offered a complete repudiation of foreign rule and rejected any prerequisites for the attainment of independence. Soon after its passage, the resolution formed the basis of a new committee with broad powers to investigate colonial rule and hear petitions from colonial subjects, making colonial rule subject to international scrutiny and to the demands for self-determination. 2

While 1960 marked a radical rupture in the history of modern international society, it has largely been subsumed in a standard account of decolonization where the transition from empire to nation and the expansion of international society to include new states is a seamless and inevitable development. This account of decolonization is premised on the view that anticolonial nationalists appropriated the language of self-determination from the liberal internationalist tradition of Woodrow Wilson in order to secure independence from alien rule. In adopting the language of liberal self-determination, the nationalists of the colonized world are thought to have mimicked the existing institutional forms of the nation-state. And while decolonization is credited with universalizing this state system, its nationalist and statist premises are viewed as anachronistic in a postnational and increasingly cosmopolitan world order.

Recasting anticolonial nationalism as worldmaking disrupts the central assumptions of this standard account. First, it expands the account of empire beyond alien rule by illustrating the ways black anticolonial critics theorized empire as a structure of international racial hierarchy. Drawing on W.E.B. Du Bois’s famous diagnosis that the “problem of the twentieth century is the problem of the color line,” the central characters of this book drew critical attention to the enduring legacy of racial hierarchy and slavery in the making of modern international society. Second, in response to the political dilemmas international racial hierarchy posed, anticolonial nationalists in Africa and the Caribbean insisted that self-determination required a combination of nation-building and worldmaking. Their vision of a postimperial world order prompted nationalists to create international institutions that could secure the conditions of nondomination. This claim that national independence required international institutions was a key insight of the anticolonial account of self-determination. Finally, recovering their global aspirations highlights the persistence of international hierarchy and outlines new directions for contemporary debates about global political and economic justice. Together, the expanded account of empire, the rethinking of anticolonial nationalism, and the theorization of a postcolonial cosmopolitanism constitute elements of a political theory of decolonization.

Beyond Empire as Alien Rule

As postcolonial states worked to pass resolution 1514 in 1960, historians, philosophers, and political scientists offered their first interpretations of the unprecedented process of decolonization. That same year, the Oxford philosopher John Plamenatz published On Alien Rule and Self-Government, while, across the Atlantic, the Harvard political scientist Rupert Emerson published From Empire to Nation.3 Emerson and Plamenatz sought to explain how “alien rule” suddenly became illegitimate in the twentieth century, and they found their answer in the global diffusion of Western ideals. The delegitimation of alien rule in the mid-twentieth century, Plamenatz argued, was itself a product of the gradual Westernization of the world. European imperial expansion fueled the spread of principles like self-determination, democracy, and freedom and made possible anticolonial nationalists’ critique of alien rule.4 Emerson concurred, arguing that “through global conquest the dominant Western powers worked to reshape the world in their own image and thus roused against themselves the forces of nationalism which are both the bitterest enemies of imperialism and, perversely, its finest fruit.”5

Key tenets of these early interpretations—the emphasis on alien rule, the inattention to the international conditions and context of imperialism, the identification of decolonization with the globalization of the nation-state, and the expansion of international society—continue to shape our understanding of the collapse of territorial empires. From international relations to normative political theory, the recurring emphasis on alien rule conceives of empire as a bilateral relationship between metropole and colony. On this view, empire is a “a system of interaction between two political entities, one of which, the dominant metropole, exerts political control over the internal and external policy—the effective sovereignty—of the other, subordinate periphery.”6 Involuntary subjection, nonreciprocity, and inequality characterize this relationship between the colonized and colonizer. 7 The international component to alien rule is understood as exclusion of the colony from international society.8 Such exclusion differentiates alien rule from other forms of international hegemony that emerge within a rule-bound international order.9 As a result, the international order is conceived as a dual structure that grants metropolitan states membership as sovereign equals and excludes colonies outside of its boundaries. With this bilateral account of imperial domination and a bifurcated view of international society, the alien rule thesis understands self-determination as a double move of overcoming alien rule and achieving inclusion in international society. Empire comes to an end when formerly excluded colonies enter international society as full members, and central to this inclusion is the universalization of the nation-state as the accepted institutional form of self-determination. 10 Twentieth-century decolonization is thus viewed as the culmination of a long history in which the nation-state is progressively globalized and becomes the counterpoint to empire.11

While the empire-to- nation narrative appears to capture the transformations of the international order in the mid-twentieth century, this account of decolonization also obscures the more far-reaching efforts to remake rather than expand international society. Characterizing decolonization as a process of diffusion, in which a “gradual Westernization” of the world took place, blunts anticolonial nationalism’s radical challenge to the four-century- long project of European imperial expansion

. Like British prime minister Harold Macmillan’s evocative phrase “the wind of change,” the diffusion narrative naturalizes decolonization, rendering it an irresistible development that necessarily follows from empire.12 Indeed, well before the rapid decline of the British Empire, interwar metropolitan intellectuals and elites coined and adopted the term decolonization to reconcile their imperial past and present with what they believed was an inevitable postimperial future.13 In this early articulation, decolonization was pictured as already immanent within the project of empire and did not signal imperial defeat. Decolonization thus “worked to absorb and deflect the phenomenon it ostensibly described.”14

Rather than a seamless and inevitable transition from empire to nation, anticolonial nationalists refigured decolonization as a radical rupture—one that required a wholesale transformation of the colonized and a reconstitution of the international order. For Kwame Nkrumah, decolonization was not a wind blowing over the African continent but instead a “hurricane of change . . . [that is] razing to the ground the many bastions of colonialism.” 15 From this perspective, “independence means much more than merely being free to fly our own flag and to play our own national anthem. It becomes a reality only in a revolutionary framework.”16 Nkrumah’s vision of decolonization as revolution was directed toward undoing the dependencies that colonial domination left behind. Dependence structured the condition of formerly colonized subjects as well as the relationship between the former colony and the international order. According to Nkrumah, a people “long subjected to foreign domination” become habituated to their dependence.17 The nationalist movement and postcolonial state would combat the economic, political, and moral-psychological forms of colonial dependence through an expansive politics of postcolonial citizenship. 18 This nation-building project, however, was insufficient in a context where dependence also characterized the new nation’s condition in the international order. The hoisting of national flags and singing of national anthems—the mere transfer of power—left intact the economic and political position of new states. Decolonization understood as a revolutionary project thus required remaking the international order that sustained relations of dependence and domination. Nation-building was to be situated and realized through worldmaking.

Nkrumah’s concern with the persistence of domination in the international sphere points to the ways that anticolonial accounts of empire extended beyond alien rule and homed in on the problem of international hierarchy. Anticolonial nationalists argued that a bifurcated system with sovereign and equal members and excluded colonies did not characterize the international order. Instead, colonies and peripheral states were internal to international society but appeared in that space as unequal and subordinated members. For instance, the colonization of Africa in the late nineteenth century was facilitated through international treaties and conferences. In those contexts, African states and political communities were endowed with an international personality that had made possible their domination. Viewed from this perspective, colonization was not experienced as exclusion from but as unequal integration into international society.

Unequal integration conceives of international society as an internally differentiated space that includes sovereign states, quasisovereigns, and colonies, which are organized through relations of hierarchy. The hierarchical ordering of international society ensured that non-European states were not afforded the full rights of membership in international society. The distribution of rights and obligations was such that non-European states and colonies were encumbered with onerous obligations and had only limited or conditional rights. In highlighting the ways that unequal integration is embedded in the formal institutions of international society, this account of hierarchy departs from theories that emphasize how dominant states exercise economic and military authority over states.19 Distinct from hegemony, unequal integration as a constitutive practice of international law produces differential legal and political standing in international society. This unequal international standing functioned as the enabling background of European imperialism. It coincided with and facilitated political and economic domination.

#### Bearing witness to the history of black sovereignty fights antiblack erasure. The Haitian Revolution demonstrates that even those deemed inhuman and unpolitical by others have the right to sovereignty.

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In a recent, rousing, oft-quoted essay written just after the 2010 earthquake in Haiti, Ulysse argues that Haitians have typically appeared in research as “fractures, as fragments—bodies without minds, heads without bodies, or roving spirits.”33 Turning her eye to the representations in the media of Haiti and Haitians that appeared after the earthquake, Ulysse reads and critiques them for their stereotypical portrayals.34 For Ulysse, these portrayals emerge from “the dominant idea” that “Haitians are irrational, devil-worshipping, progress-resistant, [and] uneducated.” These assumptions are not just a case of blatant primitivism and public disavowal. Too many entities, Ulysse laments, see “Haiti and Haitians [… as] a manifestation of blackness in its worst form.” Why? Its history and its politics. She continues: “The unruly enfant terrible of the Americas defied all European odds and created a disorder of things colonial” in the founding of its state.35 This declaration of independence provided a legible and visible challenge to colonialism and to articulations of whiteness (in its many fluctuations and permutations) that represented blackness (variously defined) and statehood as anathema. The message: blackness and sovereignty don’t mix**.** This is not just a disavowal of Haiti’s origins. As Dubois, Ulysse and others have extolled, Haiti continues to be portrayed as a politically wrong and even abhorrent thing.36

Although the surge in scholarship on Haiti and the Haitian Revolution has shifted some popular perspectives regarding Haiti, much of this work has provided little evidence of Haiti’s relationship to and influence on black statehood and political thought across the last two centuries. Trouillot picks up on this political silence, amongst other occlusions, in Silencing the Past. In one searing passage, Trouillot makes this link plain, charting the ways that the ontological world view held by many whites and non-whites in Europe and the Americas refused to include a vision of freedom for enslaved Africans and their progeny. He argues that it was not that freedom was imagined as impossible for enslaved Africans (and other people of African descent) as much as it was articulated as a state of being that slaves could never achieve. Even those who countered this world view with more radical and equitable articulations about people, politics, freedom and racial difference (and Trouillot acknowledges that there were some) struggled to imagine any world in which a slave uprising could ever lead to the formation of a black nation-state.37 Unthinkable revolution? Yes. Unthinkable revolution leading to an independent state? Just as impossible—and potentially more dangerous. Ulysse makes this point plain in her NACLA Report essay, “Why Representations of Haiti Matter Now More than Ever.” In assessing the pejorative imaging of Haiti from its origins to the twenty-first century, Ulysse argues that it “had to become colonialism’s bête noire [literally translated as “black beast”] if the sanctity of whiteness were to remain unquestioned.”38

As a nation formed through rebellion, violence and anti-colonialism, Haiti would represent the least “normal” nation in the nineteenth-century Atlantic world as it outlawed slavery from the beginning and articulated, at least on paper, that all of its citizens were politically equal and black. In one of Haiti’s earliest constitutions, all Haitian citizens were legally defined as black, regardless of skin-pigmentation or prior racial categorisation. These political moves and assertions put the nation at odds with the nation-states in the Atlantic that surrounded it. As historian Julia Gaffield succinctly notes in Haitian Connections in the Atlantic World, “the basis of the economic system of the Atlantic world was under attack” after Haiti’s 12-year battle for freedoms, rights and opportunities drew a successful slave revolution and violent anti-colonial struggle into a concentrated fight for independence that would, improbably, defeat the French—while also seeing off challenges from English and Spanish forces who saw an opportunity to take the island by force.39

Although often cast as a ragtag, untrained cadre of blood-thirsty agitators, especially by antagonists in France, England and the USA, Haitian revolutionary leaders (and their representatives) spent considerable time influencing foreign officials, developing new strategic governance models (or building upon older colonial models) and working out how to perform sovereign politics amongst other sovereign nations, while black. For these and other reasons, Haiti was and remains, due to its history, a vastly important political entity.40 As Malick Ghachem notes regarding Haiti’s official declaration of anti-colonial freedom, “the mere existence of Haiti, the very fact of its new ruling class, and the act of the declaration itself—all of these were momentously novel forces in the Atlantic World.”41

In short, it was led by people of African descent who declared in their performance of power and rights that black people could be racialised as black and political. In The Haitian Declaration of Independence: Creation, Context, and Legacy, David Armitage, Julia Gaffield, Laurent Dubois and Erin Zavitz make clear that what could be read as a singular “Declaration of Haitian Independence” should rightfully be seen as “acts” of becoming that took multiple forms and were performed on varied stages. Through song, oral history and in print forms that circulated the Atlantic world, Haitian leaders and Haitian people signalled a refusal to unbecoming.42 The new nation’s very existence ran counter to pejorative assumptions and increasingly vitriolic racist imaginings that systematically rejected the ability of people of African descent to be creative, exhibit intelligence or even understand politics, much less engage in political behaviour and activities. In asserting their rights to sovereignty and working with various tools and circuits of power and production to communicate those rights, Haiti and its officials rewrote the rules about who could and could not be a sovereign body, as well as how that sovereignty would be performed. This book explores that terrain. The Unfinished Revolution: Haiti, Black Sovereignty and Power in the Nineteenth-Century Atlantic World chronicles the ways that Haiti’s black sovereignty moved and morphed in the Atlantic world. Tethered, then, between a kind of “othered” space, Haitian officials would use whatever means were at their disposal to resist closure to and consumption of their independence and power, from letters, photographs, material objects, narratives, diplomatic missives, black and brown bodies, essays, newspaper articles to political performances on the world stage. What emerges from these oppositional, yet imploring demands is a sovereignty that celebrates, even as it rejects, its outlaw status.

In 1853, Benjamin C. Clark, Haitian Commercial Agent to the USA (more on him in later chapters), argues in A Plea for Hayti that Atlantic nation-states, specifically the USA and Britain, failed to recognise and adequately to engage diplomatically with Haiti not simply because the USA’s continued practice of Atlantic racial slavery was until the 1860s incompatible with the anti-slavery demands of the new Haitian nation-state. For Clark, at the heart of the antipathy toward Haiti was a deep resentment of its very existence. Haiti was not merely the product of a successful slave revolt: it was a black nation-state. And this identity made it an oddity within an Atlantic world that had no category for black political entities (in the form either of nations or citizens). Clark suggests that Haiti’s oddness was not just unthinkable: it was outside the bounds of custom and law. In a stirring passage, he stresses that the USA’s failure to engage with Haiti as a sovereign entity was at odds with its engagement with other independent Latin American countries. Clark argues that this differential diplomatic treatment was because “the horrors of St. Domingo were raked up and interposed, and it was contended that these Islanders having achieved their freedom by bloodshed, should forever be regarded as outlaws.”43 And they were not just any outlaws. They were self-avowed black ones who dared to perform their power on a global stage amongst an ocean of white nation-states and their official and unofficial representatives.

Nineteenth-century Haiti’s outward-facing officials and their cognates from various economic industries and artistic sectors performed a form of racial power that utilised older and newly formed networks of influence to reposition and rearticulate Haiti’s presence in the Atlantic world as a black space steeped in political power. Neither organised nor always coherent, this image-making of sovereignty assembled often unstable figurations of control and characterisations of power that when read together formulate a singular black political body that represented (and continues to represent) a sovereignty formed through encounters with and amongst other sovereign nation-states (more on this below). What has been gathered here in one text are the ways that a variety of agents and actants fought for, against, in tandem with and in praise of Haiti’s black sovereignty. Through this examination, what emerges is not a fight for a specific cause but a series of jumbled and, at times, competing strategies for state control.

These strategies (and the encounters that gave birth to them) illuminate the ways in which Haitian officials, their designated political and cultural attendants and external others would use various geopolitical and economic openings within a changing and volatile Caribbean region to configure Haiti. Many nineteenth-century Haitian leaders engaged in Haiti’s international work found their sovereignty consistently compromised by outside agents who treated the nation as an exception in need of external control. Sociologist Alex Dupuy, writing about power and class in twenty-first-century Haiti, provides a roadmap to these earlier sovereignty struggles in Haiti, suggesting that “if by sovereignty we mean the right and the ability of a people and their government to determine their agenda,” then this right and ability is compromised and undermined “when the state is subordinated to the dictates of foreign governments and international financial institutions, and/ or the interests of powerful private foreign and domestic actors who are not accountable to the people or their government.”44 Dupuy’s short list roughly captures the various interests exhibited by foreign officials, government agencies and financial organisations in their more than 200-plus-year encounters with Haiti.

Although nineteenth-century Haitian officials would court, entrap, ensnare, play with and even manipulate the terms of many of the diplomatic and economic state-crafting of their times, other nations also played key roles in these dramas. Here is a short list of some of these political “acts”: the USA engaged in trade embargoes against Haiti in the early 1800s in order to isolate the young nation; France levied a crippling indemnity in 1825 of 150 million francs that forced the former colony to pay its colonial masters for its independence; and US banks took over the nation at the end of the nineteenth century near the start of the US military’s occupation of Haiti that lasted, in total, almost 20 long and violent years.45 By the time the late twentieth-century structural adjustment programmes and internal coups brought Haiti under the protection (or, some would suggest, control) of the United Nations Stabilisation Mission in Haiti (Mission des Nations Unies pour la stabilisation en Haïti or MINU STA H) force and auspices of the US State Department, Haiti had lived through centuries of compromise and undermining—and responded to each episode with even more figurations of black sovereignty.

Some pundits, influenced by accounts in the media and international governance documents that frame Haiti as a failed state, may see my interrogation of sovereignty in Haiti as a naive dream that Haiti could instantiate its own political future. I can anticipate that many of these same people, critical of Haiti and the political aptitude of its leaders, will pick up this book and doubt if a failed state could ever be, or even had ever been, a sovereign one. This book responds to these and similar conjectures with a simple, but important, question: “What makes Haiti a failed state?” Some of those in the development world and within international relations circles point to Haiti’s poverty levels (perhaps reciting the mantra: Haiti is the poorest nation in the western hemisphere) or its lack of institutional infrastructures as examples of its failure. The issues of poverty and infrastructural collapse may be visible in Haiti, but other nations have significant poverty levels and little or no internally coordinated agencies or organisations. What makes Haiti so especially different, so critically difficult, that it merits a charge of failure at its roots or claims by the media of suffering from a “complex web of progress-resistant cultural influences”?46

This line of questioning is not about apportioning blame on others for the ways that various Haitian elites have amassed wealth and allocated resources within Haiti to the detriment of the masses. I raise the spectre of failure to make clear that in repeating Haiti’s purported failure and then reading that failure back into Haiti’s history, critics and supporters alike run the risk of never really understanding the routes that have brought various configurations of the nation into existence. In reading Haiti’s history as a narrative of declension, whose high point is the Haitian Revolution, critics (and even some supporters) repeat the very acts of erasure that many claim silenced the Haitian Revolution for so many years to those outside of Haitian studies.

We must do better by Haiti. We must challenge ourselves to witness Haiti’s history and see its many resistances to charges of “state failure” by its many presence(s) on the world stage. The Unfinished Revolution resists reifying the rhetoric of failure and instead lays bare the ways that its logics echo within criticism of Haiti’s history and its continued political existence. In drawing together a range of documents, actors, nations and entanglements, this book moves conversations about Haiti beyond the polarities that tend to constrain it—i.e., failed black nation on one side and idealised revolutionary spark of radical antislavery and anti-colonialism on the other.

It responds to historical anthropologist and Francophone political theorist Gary Wilder’s call for scholars to offer “clear” speaking about Haiti that attempts to chart its existence without resorting to “overdetermined poles of abject failure and audacious triumph.” Wilder stresses that circulating images of Haiti must be challenged if we—in the widest sense of community—ever hope to silence current articulations of Haiti as a “phantasmic object of fear and desire” that conjure fantastic notions of “political failure, social catastrophe, or natural disaster.”47 In many ways, this book charts the tensions that have emerged from Haiti’s unfinished project of creating a black sovereign nation-state under these conditions.

In a 2010 talk delivered to the United Nations on the international day of remembrance for people brutalised by slavery and the transatlantic slave trade, political theorist and Africana studies scholar Anthony Bogues turns his lens to Haiti and its “archive of freedom.” Bogues argues that in order for the wider public to reframe Haiti as a freedom land, the international community must recognise that Haiti’s revolutionary beginnings contained not one rebellion, but two. The first violent insurrection rejected slavery; the second, occurring years later, drew together a concentrated military force determined to fight against a return to colonialism and imperial control. In the pages that follow, I posit that there was—and remains—a third, and unfinished, revolution in Haiti: sovereignty. Although sovereignty has not emerged as a significant theme examined by scholars, Haitian politics, in general, has garnered critics’ attention. Notably, researchers have produced exceptional new readings of Haiti’s early constitutions (including Toussaint’s pre-Haiti Constitution of 1801).48 These new considerations sit alongside other examinations of diplomacy, such as texts by Ronald Johnson and Ashli White, that seek to understand the struggles of the burgeoning nation to set up and defend its right to existence.49 These works are joined by a wide and varied body of texts that focus on Haiti’s early political manifestations and its interactions with US literary history through examinations of such themes as the significance of the image and military acumen of Toussaint Louverture to black power in the Atlantic world and the writings of particular US authors who have written on or been influenced by Haitian culture and politics, such as Charles Brockden Brown, Herman Melville and Leonora Sansay, or the perspectives from some who spent considerable time in Haiti during the Haitian Revolution, including the British officer Marcus Rainsford.50 Francophone Caribbeanists have also considered the political world of Haiti. These scholars have offered new methods and new source materials that have helped document how the various figurations of early Haiti were rooted/routed through Haitian literature and the cultural and political worlds in the Americas and the wider French empire.51

The above thematic sets of work have been influenced (in some instances, quite noticeably) by additional scholarship on Haiti crafted by social scientists, including the works of David Nicholls, J. Michael Dash, Michel- Rolph Trouillot, Sidney Mintz, Alex Dupuy, Arthur Stinchcombe and Anthony Maingot, each of whom has painstakingly documented tensions around development and political economy with regards to Haiti and Haiti’s place within geopolitical structures of power.52 Aspects of these now classic texts can be found in newer pieces from interdisciplinary investigators, such as the work of Philip Kaisary, who moves within and between law, race and human rights, and Robbie Shilliam, who teases apart the entanglements between international politics, post-coloniality and global movements for decolonisation.53 Both Shilliam and Kaisary, alongside Matthew Smith, have produced nuanced texts focused on the Haitian Revolution, the early Haitian republic and later Haitian history that interrogate issues of Caribbean exile, capitalism, liberty and race. Although, as mentioned, aspects of politics or “the political” play a role in the above-mentioned texts and in the wider work of some of the authors identified, sovereignty—as a formative construction—remains undertheorised.54

The Unfinished Revolution grapples, cautiously, with race and sovereignty. It builds upon the scholarly openings provided by many of the above texts and projects, even as it amasses and assesses a new archive of nineteenthcentury and later materials that gesture toward the challenges, performances and articulations of nation-ness that contributed to (and may continue to shape) Haiti’s black sovereignty. Although focused primarily on the long nineteenth century, The Unfinished Revolution does venture into later periods in order to illuminate the continued significance of Haiti’s unfinished sovereign revolution to its current international battles—including those that focus on economic, political or cultural issues. As opposed to being a text about the past, I have been urged, by the material, to recognise that these are ongoing struggles and configurations that remain ever present in political dramas facing Haiti, today. I do not aim in these temporal moves to capture every manifestation of continued resistance or battles. What emerges are instances of forward shifts in the narrative that speak directly to particular instances, tropes or figurations that make clear that the unfinished nature of Haiti’s sovereignty will not be miraculously solved by some future form of political recognition. In weaving through time, I reconstruct the ways that these promises in the past have been laid out before—and have not come to fruition. Time here is not a panacea to political dispossession and challenge. In fact, what bubbles forth from the archive are the many spirals of form, thought and resistance that move through and against the unfinished project of black sovereignty.55

In what immediately follows, I offer up an expanded discussion of black sovereignty that makes clear the contours of the term, as articulated within these pages, and its use and relevancy as a framing device. In order to define the limits and potentials of this term, I first explore blackness in relation to sovereignty before tackling the exciting (yet, racially limited) field/debates within sovereignty studies. This discussion is finally followed by a detailed description of the chapters and themes contained within the text.

Black is a Country: The Blackness of Black Sovereignty

Although I use the term black sovereignty throughout the book, I do not deploy it lightly or use it without some trepidation. I recognise the vexed and problematic nature of reducing the complexities of sovereign power and the performances of it on the global stage into an amorphous (even as it may be generative and politically cohering), socially constructed racial category of distinction. For decades, critics have argued that blackness is “slippery,” often defying definition and eluding formal identification. As a result, it is often described as a signifying trope; a dynamic, conscious way of living; a forced conceptualisation; a mobilising idea; a social movement; a political demand; a creative impulse and (importantly) a socially constructed term that means (meant) none of the above.56 The field of black studies is enormous and constantly being reshaped by scholars around the globe who find within its generative space new forms of relationality and contestation. The deftness and nuance of performance artist and black queer theorist E. P atrick Johnson’s work perhaps best captures the vitality (and interdisciplinarity) of critical approaches to the study of blackness. As Johnson notes in Appropriating Blackness: Performance and the Politics of Authenticity, “‘black’ culture” contains a “production of blackness” that involves a “mutual constructing/deconstructing, avowing/disavowing, and expanding/ delimiting dynamic.”57 In essence, it is a complex and charged figuration.

Of course, we know that any assertions about blackness’s essential qualities must be questioned. As scholars have argued for many decades within African diaspora studies, terms such as “black” may hold some set ideas and historical constructions even as they mutate others once black and blackness become global and situated within specific spaces and wielded by specific actors to describe specific entities—whether people, places or things. Deployed in different settings and at different times, these labels may enable, as well as constrain, certain conclusions about the performance of difference—and who can be configured within its sphere. As anyone who studies racialisation and racialisms in a global perspective knows, what constitutes hierarchies of being in one location does not have to be regarded the same way in another.58 New forms of difference, even when marked against the same body, may enable someone never to see race in their daily lives or be marked as different by others primarily through frameworks informed by that body’s immediate location. (Here I am thinking about friends from areas such as Bahia, in north-eastern Brazil, who see themselves one way and then travel to the USA or the United Kingdom and are marked differently by a new system of racialisation or difference.)

As we seek out ways to investigate the transnational vectors and cultural networks that mobilise blackness and the flows of blackness in particular ways, we must also develop methods that allow us to understand how specific political systems and institutions racialise, erase or even re-racialise specific bodies for political purposes. “Black” as a demarcation of a political body/nation, may operate in a similar manner. There is still more research needed in order fully to comprehend the ways that race and nation politically intersect at the international level and impact governance structures and relations between particular nation-states—especially nations such as Haiti, Abyssinia and Liberia—whose nineteenth-century exceptionalism marked them as different. Essayist and novelist Teju Cole makes clear the dilemma about the admiration (ostensibly on the part of white Americans and Europeans) of black exceptions: “In the presence of the admirable, some are breathless not with admiration but with rage. They object to the presence of the black body (an unarmed boy in a street, a man buying a toy, a dancer on the subway, a bystander) as much as they object to the presence of the black mind.” Cole frames these objections in ways similar to Trouillot’s silences, but notes something far more damning about the negation: it profits from “black labor and black innovation,” or what Cole describes as the “co-option of black life.”59 Although this refrain is not the main impetus for this book, there is an echo of it within the history of enforced labour, co-opted lands or meandering credit and inflated geopoliticking in the region. While some nations may have disavowed Haiti, still others courted the nation for its resources—be those people or material things.

Rather than an exercise in arguing for Haiti’s legitimacy within histories of dispossession, this book situates Haiti’s unfinished revolution as an ongoing project that continually produces, even as it recasts, black political thought and nation-state action. It takes the form of a standard academic monograph, but this final product sits uneasily in this form. This discomfiture is a testimony less to the prematurity of the investigation than the contrapuntal aspects of the terms of discovery, the slipperiness of statecraft and the difficulties in finding a point of origin.

In writing this text, I found myself immersed in what critical race theorist and cultural theorist Jared Sexton describes, in his musings on the political geography of black lives, as moments thinking “about the unspeakable, perhaps unimaginable ways that black lives have been devalued,” where you—as the crafter of this tale—“have trouble determining when to start the story—or history or mythology or fable—or how far afield to draw your sphere of concern.”60 This uncertainty adequately captures the dilemma of imagining and articulating Haiti’s black sovereignty as it has emerged within a consistently demeaning and delimiting political world quite often fuelled by racialisms and determinants of political impossibility for those of African descent. Balancing this searching for with a critique of the failings of the frames of race and international relations is a difficult—some would even argue impossible—task.

Yet, this work is more than just an act of recovery regarding Haiti’s political struggle. It is also a search for a framework that corresponds, in many ways, with writer, filmmaker and cultural critic Frank B. Wilderson III ’s call for a “conceptual framework, predicated not on the subject-effect of cultural performance but on the structure of political ontology, a framework that allows us to substitute a culture of politics for a politics of culture.”61 In order to recognise this framework, we—scholars, activists, critics and casual observers alike—must attune our instruments of knowing (spirit, critical thinking, rhythms, etc.) in order to bear witness to the power of black sovereignty and the stultifying aspects of negrophobia/black nullification that exist within transnational sovereignty’s roots and make the ontological struggle of black sovereignty so compelling. Forcing sovereignty to grapple with blackness offers up the chance to study black sovereignty’s many modes and practices: its power, and, to borrow from poet and cultural critic Fred Moten, its “thingliness, even as (absolute) nothingness, even as imprisonment in passage on the most open road of all, even as—to use and abuse a terribly beautiful phrase of [Frank] Wilderson’s (2010: ix)—fantasy in the hold.”62

Back in Haiti, though, blackness has had a long and contentious history as a demarcation of citizenship, an African ancestral-spiritual connector and as part of a movement (and a weapon in the hands of politicians such as François “Papa Doc” Duvalier) of power along class and colour lines—pivoting Haiti, at times, culturally between France and Africa. Cultural critic and critical legal scholar Colin Dayan notes how Haiti, “called variously ‘Black France’ by one nineteenth-century observer” and “a tropical dog-kennel and pestiferous jungle” by another, has always been “moved uneasily between the extremes of [black] idealization and [black] debasement.”63 Dayan continues by noting, “the business of being Haitian [as in the nation-state] was more complex” than these simple categories express.64

Dayan’s observations nod to the entangled racialisation and colourisation that divided Haiti in its colonial form in the eighteenth century. It also firmly rejects philosopher and historian Ernest Renan’s infamous suggestion that race matters only to historians interested in humanity and “has no applications, however, in politics.”65 Blackness mattered so much to Haiti’s revolutionary leaders that the very first constitution of the young nation declared that all Haitian citizens would be marked/coded as “black,” regardless of their previously applied, chosen or assumed racial category. While Haiti’s new leaders chose a name for the nation that forever linked it to its indigenous past (as “Ayiti” is a Taíno word that means mountainous land), they constitutionally cast their citizens as universally black, or what Doris Garraway describes as a “negative universalism.”66 These black citizens, even with their internal divisions in terms of status and wealth, charged into the Atlantic world and challenged—with their very presence and continued existence—that black people, , even those deemed inhuman and unpolitical by others have the right to sovereignty. This book assembles a rich and unexamined archive of power and political practice that provides the contours and evidence of political theorist Siba Grovogui’s claim that “sovereignty takes form through multiple, complex, and differentiated institutions that congeal into formal and informal regimes of authority and practices” that look vastly different when coded black or seen through the lens of race.67 As tempting as it might be to offer a list of patterns or definitive tropes, I have moved to resist the comfiture of the all-knowing intellectual. As a journey, what appears here is less the final word than an opening into a political terrain of discovery. There is, therefore, much to learn.

These racialised differences often erupted into challenges by foreign others to Haiti’s sovereignty that tended to carry within them certain thinly veiled racisms. The encounters often appeared within diplomatic and international circles, especially as nation-states discussed, negotiated, crafted or figured Haiti into their plans. Although external agents often played key roles in the narrativisation of Haiti as black and “other” in these encounters, Haitian politicians and their intermediaries did not sit by as silent actors in their own national/international dramatic story. Instead, many would insist on manipulating, curating, challenging or even assisting the terms used and the assumptions made during these negotiations—for their own political benefit and not necessarily those of the nation’s citizens. Recovering these narratives is important, but so too is understanding how this state-crafting has been and continues to be influenced by racial formations and the unfinished project that is Haiti’s revolutionary sovereignty.

The challenges encountered by Haiti’s founding band of agitators, activists, conspirators and freedom fighters still resonate today, as Haiti and its various leaders engage in battles and negotiations with (or, at times, abet) outside financiers, internal power brokers and international “keepers” of the peace over Haiti’s precarious labouring populace and the nation’s resources (including those found amongst its people and within its environment). Sociologist and Caribbeanist Mimi Sheller argues in an important essay on “Haitian Fear” that how and what we discuss about Haiti “will continue to have a significant impact on international relations and racial formations” in Haiti.68 What Sheller sees as Haitian impacts, I see as more Atlantic and global concerns. Motivated, in part, by the racial projects that attempt to categorise and de-limit the political and sovereign work of Haiti and its politicians, this book charts how this state-work would be cast and performed by Haitians.

Although significant things have been done to Haiti by external others, critics must begin to understand the ways that Haitian officials utilised various conduits of power and influence to craft their version of black statehood in the midst of these external pressures and tensions. What emerges from this multi-directional flow of narratives, counter narratives and cultural diplomacy is a dialogue of power brokering that forms a layered and racially charged conversation about politics and sovereignty—and which entities can embody or be recognised, externally, as having or expressing those characteristics. This is more than just a simple discussion about exclusion.

Constitutional law scholar Hent Kalmo and intellectual historian Quentin Skinner assert, in a critique of sovereignty’s purported obsolescence (amongst other topics), that sovereignty remains an important ambiguous term worth exploring for the very reason that in “answering the question as to what sovereignty is,” critics also have to deal with an additional linked question that cannot be separated from the first—namely, “who is thought to be its proper bearer.”69

Much of the recent political and development aid rhetoric regarding Haiti’s “failed state” status hinges on the premise that Haiti bears no resemblance to a functioning sovereign state. Although some critics point to various causes for Haiti’s perceived failures—such as foreign intervention, unequal power, corruption or political instability—this book asserts that any list of Haiti’s perceived “problems” must include the challenges and manipulations amongst international bodies and nation-states over Haiti’s sovereign existence. This is, as described above, an unfinished issue.

There are important reasons for revisiting Haiti’s unfinished sovereign revolution and its sovereign practices. One, the arrival of the new nation of Haiti in the Atlantic world brought with it sweeping political changes— especially regarding the ideation of freedom, liberty and power—and who had the rights to have, demand and exhibit any of these conditions. This demand, startling and ground-breaking in the nineteenth century, shook the foundations of difference, possession, rights-taking and capital accumulation that many European empires relied upon to build their colonial machines. The arrival of Haiti, and its revolutionary beginnings, would have profound impacts on later rebellions, uprisings, power demands and even national movements across the globe.

While Haiti’s revolution has been celebrated and remains a touchstone for various human rights campaigns because of its embodiment of anti-slavery and anti-colonialism, Haiti’s sovereign arrival—and the impact of its continued political existence—remain unexamined. And we know that its representation mattered and continues to matter in twenty-first-century rhetorics of aid and humanitarianism. Haiti’s name is invoked—especially in coverage in the media—as an anomaly. It may no longer be cast as a savage, violent country, but far too many identify it as a lawless, inept one.70 There is a second important reason to tread into this subject area. Haiti remains a nation caught between the tethers of neoliberalism and planetary sovereignty (although it could be argued that these terms describe similar motivations of control). More has to be done to disentangle these frames of relationality from old and new forms of racialisms (see Chapters 2 and 3 for more on these processes).71 And, finally, Haiti’s particular political situation provides substantive examples of the frames and possibilities of power and resistance for those engaged in global discussions and negotiations about dispossession, rights and environmental impact, such as the many conversations and agitations regarding the future of Kiribati and its people.72

Adding Haiti’s environmental crises into these larger global considerations of contested and racialised zones, such as Nauru, should enable scholars, critics, scientists, community groups, environmentalists and planners to recognise how, as Sheller asserts, “interpretations, representations, and explanations of Haiti continue to serve ongoing ‘efforts to reorganize and redistribute resources along particular racial [or colonial] lines.’”73 What Sheller illuminates and The Unfinished Revolution begins to chart are the ways that these economic and political redistributions and reorganisations hinge on the destabilisation of sovereignty and the currency of racialisation or difference.

In offering up the term “black sovereignty,” I recognise that I have set this text within a vexed area of scholarship regarding the black Atlantic, black politics and black nations in which blackness is neither easily nor often clearly defined in relation to territorially bounded political structures and institutions. (Of course, the same could be said for sovereignty and nationness, but let’s work through one theoretical battle at a time.) Although I have briefly argued above why Haiti’s sovereignty could be coded black, the question remains what is symbolised either about race or politics with or perhaps through this articulation. When we—as critics—configure blackness in association with political bodies, such as nation-states, public bodies or communities, does it describe shared experiences (such as Atlantic racial slavery or cultural connections to Africa); certain political imaginings and resistances (such as those espoused by Négritude, the African Blood Brotherhood or the Black Panthers); or is it merely the recognition of a majority or a minority population within a bounded territory (such as the “race” of the main population of Jamaica or the racio-cultural place-coding implied in the term “black America”)? These questions are not just about numbers, majority or minority status, political ties and cultural memory. What people are called, how they organise themselves through or against these designations, and the ways that other groups recognise or categorise them influences how they may mobilise or construct themselves—and how others may frame their existence.

From a political standpoint, these categorisations and recognitions may carry even greater weight during intergovernmental encounters, delimiting, constraining or even opening certain pathways and articulations of rights, freedoms and liberation strategies during various sensitive debates, negotiations and diplomatic encounters. Black may not be a country, but, for those who experience life as an “outsider” within, it may be the closest thing to a coherency that they have, even as the connective potential of “blackness” gets reshaped by some political agents as a weapon of control or difference.74

As suggested above, identifying a nation as a black nation-state may productively trouble the ways that populations utilise racial codes of distinction (such as the vexed role of “colour” in Haiti, more broadly) and the ways that racialised codes of aggregation may be utilised by internal and external others for political purposes. An example? When pundits in the USA talk about “black America” are they cohering a range of perspectives, people, experiences and ideas into something that is aligned with, but yet separate from, the generic USA? Does “black America” identify a cultural group only lightly and tangentially affiliated with the political entity that is “America”? Or does “black America” signal some entity or thing that manages to live in the land and within the imagination, as a lived theory that can buffer the struggles of existence facing many people of African descent in the USA? On a more personal point: what happens when a black American who identifies as female lives and works in the United Kingdom and encounters diversity information that labels her as black “Other”? In other words: what is blackness and what does it do to political entities, territories and bodies (in the collective sense) as they move and encounter new forms of legal entanglements and political challenges?

Returning to Haiti with these questions illuminates additional tensions. What are the dangers in investigating black sovereignty as a strategy of international power in a country where colourism politics have divided governmental bodies and citizens since its beginnings—reaching its most tragic juxtapositioning in the twentieth century’s “noirisme” movement and the rise and destructive power of François Duvalier?75

While these and similar questions push at the structure and foundations of this book, and keep me up most nights, they are not this book’s main focus. I raise these issues mostly to do battle with my own thoughts on race and national and international politics and openly to place on the table the difficult issues that trouble this research—even as I work to tackle them. As I grapple with “states” of blackness—in a political and global sense—I remain convinced that just as we need new narratives of Haiti and other self-avowed and internationally marked black nation-states we also need new frames of articulation that allow us to understand racialisms and politics even as we seek ways to redraw power within and outside of international systems of governance. These redrawings have taken on significant urgency as notable areas, such as the USA, the United Kingdom, France and Germany, confront shifting forms of racism (and fascism) within their political structures.76 These are elusive and slippery terms to quantify and capture. Refusing to try and understand black sovereignty, though, is something that we cannot continue to do. Lives, I believe, depend on our bearing witness to its moves and its continued work—positively and negatively—in shaping Haiti’s and other black nation-states’ futures. What I have written above, and what circles these pages, are difficult and contentious issues that have attracted political philosophers, activists and theorists to work through and on them.77 The reasons people turn to them are the very reasons that I have placed them for us to consider in this introduction: they impact on the “black” world and our figurations of it. As a singular body of work, this text does not aim to solve the problem of blackness within nation-state sovereignty but to highlight that it actually is a problem worth discussing. Although political theorists, such as Siba Grovogui, have written about blackness, race and sovereignty, much of the discussion on sovereignty and quasi-sovereignty focuses on indigenous sovereignty or the tumultuous mid-twentieth-century movements for decolonisation that reverberated around portions of what is often referred to as the Global South—movements that articulated a vastly different version of the “rising tide of color” that Lothrop Stoddard feared in the 1920s.78 Although indebted to Grovogui, and others, for their keen twentieth-century observations, this book places sovereignty and blackness into historical context by examining a challenge to sovereignty rooted much further back in time than the decolonisation movements of the twentieth century and grounded by figurations of race.79

The Unfinished Revolution, then, works consciously, to situate these processes within international relations, the performances of power and global politics. Even as it examines these considerations and gathers a heretofore unexplored and untheorised set of material objects associated with them, it remains committed to ensuring that additional work adds to this dialogue. And it is a dialogic exchange that is envisioned here as these objects speak to and from the times and situations that gave them meaning. The archive assembled for this project makes clear the precariousness of power as performed by particular racialised and politicised bodies—and the responses by multiple players to this precarity. It asks questions about the forms of this performance, its tropic dimensions and its responses (and adaptations) to the shifting dynamics of blackness and power in the nineteenth-century Atlantic world, even as it charts Haitian leaders’ and their representatives’ demands for reciprocity, sovereign equality and recognition from other sovereign entities. These demands, occurring in divergent circumstances and situations, such as private letters, diplomatic cables or cultural products, circulated through established capitalist flows of knowledge throughout the Atlantic world, drew together competing and, oftentimes, compelling figurations of black sovereignty and empire.

National leaders on both sides of the Atlantic Ocean struggled to recognise Haiti as an equal nation-state throughout the nineteenth century, especially one capable of engaging in sovereign decision-making. But this refusal and declared disavowal is only part of the story.80 Sources from the assembled archive within this volume amply demonstrate that many of the agents who refused politically to recognise Haiti encouraged—either directly or through various economic agents—commercial and military entanglements with Haiti. Although some media and political agents were quick to label Haiti’s entire machinery of state power as the “best burlesque” the world had ever seen, others sought ways to harness Haiti’s resources or direct its capital. And Haitian officials often fed off or even manipulated this “hunger” for their own means. Meanwhile, public discourses on both sides of the Atlantic grappled with how best to describe and deal with Haiti, the political entity.

US newspaper accounts from around the mid-nineteenth century routinely portray Haiti as a political absurdity.81 As a nation, Haiti was dubbed the Atlantic world’s foolish parody. Its monarchs, emperors and presidents represented the punchline of comical dark jokes—as if shades of colour and politics could never mix. Haiti’s attempts at engaging in statecraft were often mocked and its leaders recast in sketches as simian-like creatures ridiculously attempting to engage in politics. Critics have produced a body of literature that charts these caricatures and isolation—especially as they relate to the early years of Haiti’s existence.82 This text dives into this archive and begins to ask what Haiti’s black sovereignty is and how have the battles to be/ remain sovereign responded to racialisms and racisms within the sectors of politics and international relations. In considering this history, the text places these older battles for sovereignty within current transnational and extragovernmental initiatives and projects aimed at Haiti’s current economic and political future. The next section lays out some of the stakes of these battles for authority within sovereignty before turning to an overview of the book’s chapters.

Sovereignty without Power: The Role of Race in the Battle for Authority

As a text about Haiti and its articulation, construction and performance of sovereign power in the nineteenth century, The Unfinished Revolution does not simply argue that Haiti has been on the receiving end of ostracisation since its inception. Although non-recognition (at different times and within different contexts) from France, the United Kingdom and the USA carried with it significant penalties for Haiti, Haitian politicians, their official and unofficial designees and cultural representatives routinely staged oppositional performances of empowerment. By refusing politically to engage with Haiti, various international political actors (such as US President Thomas Jefferson, who was in office from 1801 to 1809) consciously deployed strategies of disengagement, or perhaps controlled engagement, that framed exchanges with Haitian officials and their intermediaries as variations of “not”—not politics, not recognition, not reciprocity and definitely not transnational exchanges as equal sovereign nations. In framing these diplomatic and quasi-diplomatic conversations and entanglements around “nots,” Jefferson and others stressed that they did not see people of African descent as beings capable of articulating, crafting or practising politics.83 Although many of these politicos rejected or outwardly struggled with the radical antislavery potential of the Haitian Revolution (and its violence), they also refused to assign political power to any entity—including nations—coded as black. The Haitian Revolution may have inspired fantasies and fuelled nightmares of a contagion of slave upheavals, but it also stirred up deep chasms between abstract notions and articulations of freedom and the type of people who had the right to claim those ideas for themselves on an individual, collective and nation-state level.

Political theorist Siba Grovogui traces some of this history, its impact on international relations and the role of sovereignty within these processes. In an important chapter discussing these issues, Grovogui examines the impact of the American, French and Haitian Revolutions on sovereignty’s contemporary construction. He concludes that “centuries before the modern Refugee Convention, the Helsinki Accords, and the philosophical treatises of Giorgio Agamben and Hannah Arendt, Haitian slaves had pondered bare existence and the right to those so reduced to such an existence to claim sovereign rights for themselves.” These rights-claimers, Grovogui continues, demanded in their continued national existence that people of African descent, including formerly enslaved persons, had “equal access to the resources of life” and power.84

Grovogui’s theoretical moves, above, suggest the tensions that exist within sovereignty studies between articulations about who has access to (or controls) the so-called “resources of life,” how power moves between the entities connected within sovereignty’s web and who ultimately wields sovereign authority. Political geographer John Agnew occupies a specific role within these debates. Rather than arguing the case for sovereignty’s elusiveness or its irrelevancy in our hyper-global world, Agnew takes aim at the artificial aspects of its supposed spatial demarcations. In other words, sovereignty can extend beyond state and territorial borders due to the networks that power uses to travel or the multiple outside entities that a sovereign state has to encounter. Agnew does not reject the state as superfluous. Instead, he reimagines state power as deterritorialised, setting his theories in opposition to critics who argue for either the centrality of globalisation (see sociologist Sassia Sassken for more on this) or the impact of liquid modernity upon the transnational circuits of power that fuel “extraction zones” and repeated cycles of dispossession.85

What Agnew stresses is the geography of sovereignty—and its unequal moves. In recognising the disparateness in which sovereignty can tether legitimacy to the wielding of state violence in the name of “defending the state,” Agnew draws attention to the ways in which sovereign claims or the practice of acting as a sovereign sets up a relational field in which only designated sets of actors are able to engage within certain political projects. This is a powerful situational field of engagement and disavowal that has significant domestic and international implications. As Agnew states, “claims to sovereignty provide the linguistic coin in which both domestic and international politics are transacted.”86 Although Agnew’s case studies are read through the lens of deterritorialisation and not race (in counterdistinction to my reading of black sovereignty), we nevertheless share a conviction that “sovereignty is made out of the circulation of power among a range of actors at dispersed sites rather than simply emanating outward from an original and commanding central point.”87 Agnew takes aim at the abstracted state, but his evaluations of sovereign practice involve little consideration of “race matters” within these processes.

The same is true of other international relations scholars who mostly resist discussing race. The potential importance of race to sovereignty lies just beneath the surface in many of these discussions. Take, for example, the work of international relations scholar Jens Bartelson, who, in writing about the indivisibility of sovereignty and its “symbolic form,” takes the reader through a historical reconceptualisation of early theorists of sovereignty—namely, Hobbes, Bodin and Grotius—while noting that even as scholars grapple with definitions of sovereignty and its legal and potentially extraterritorial contours, “sovereignty cannot simply be wished away, since it has been foundational to the differentiation of modern political life into a domestic and an international space.”88 If race and difference have played roles in domestic, military and imperial expansions, so too must they dance along the contours of sovereign articulations. We must not ignore sovereignty’s origins, its mutations over time as certain nation states have been absorbed within it—or distinguished as different—or the implications of these distinctions for exceptional nation-states. For the purposes of this book, it is clear that sovereignty’s nation-state beginnings do not include political bodies that represent people of African descent. By default, race must play a key role, as political entities demarcated as non-white would have been denied sovereign recognition at their conception.

Scholars such as Kevin Bruyneel have written extensively about indigenous or tribal sovereignty, especially as it relates to indigenous and aboriginal communities and First Nation peoples within North America, South America, Africa and the Pacific. Alongside work by Grovogui, these examinations within sovereignty studies have critiqued the limitations of tribal or quasi-sovereignty, including those within decolonised and paracolonial spaces still economically or politically tied (some would say controlled) by former imperial powers. These two strands of scholarship are extensive and growing and help support much of the considerations of race that inform my readings of sovereignty. Rather than read black sovereignty through a more Agambian notion of “bare life,” I read black sovereignty through the critical lens of blackness. This is not a sovereignty given meaning by enslavement, violence or the control of life, but a sovereignty given meaning through political struggle.

#### Slavery should be connected to the loss of sovereignty and statehood – not the imposition of the grammar of sovereignty. The political history of African state destruction is erased by the paradigm of social death. Social death naturalizes a liberal autonomous subject by treating slavery as a socio-cultural confrontation between slave and master. Affirmative struggle for self-expression replaces the political power of self-determination.

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Another way to approach the issue of a transformation is to focus on how contemporary theorists conceive of slavery. Clearly, a modern sensibility governs representations of early modern slavery, whereby the institution largely figures as an economic trope. The slave appears as an abject subject under dominion of the master but now untethered from the oikos, which characterized the ancient and medieval world 's instantiation of slavery. In place of dominion-which linked the slave and slavery to politics-the market and difference govern the institution. Through this prism, slavery no longer operated under the earlier formulation of power whose genealogy was traceable to the ancient world. For this reason, when theorists reference the slave, they depict modern relations in which both the master and the slave struggle for affirmation as liberal (individual) subjects**.** This very (modern) subjectivity informs the sociologist and social theorist Orlando Patterson's description of the slave. Indeed, Patterson's depiction already embodies the subjectivity of an individual on whom violence was continually enacted. In this respect, Patterson-despite his emphasis on enslavement as an act of natal alienation configured the slave as an Enlightenment subject-the individual-while also implicating the master-slave dialect in a drama cast and staged by the Enlightenment: beings conceiving of themselves, their autonomy, and freedom in terms that always already assumed a form rooted in the temporality associated with the Enlightenment. This obviously represents an ahistorical representation, which has accompanied our general embrace of Patterson's social death formulation. This realization may surprise-though curiously has attracted little attention-given that Patterson is also the scholar who long ago claimed that we needed to historicize our representations of slavery and freedom. Contrary to his insistence that we delineate the process of making chattel, Patterson's historicizing does not extend to the Enlightenment temporality that the slave inhabits. Since a subjectivity rooted in the late eighteenth century could not have served as the antithesis of the very categories engendered by the Enlightenment, which includes natal alienation, I would argue that the dynamic of making a slave in the early modern period demands a distinct history and still requires a theorization. In lieu of such a distinct historical logic with its accompanying social forms, the dispossessed, uprooted, and alienated individual-forged in the eighteenth century-remains the universal subject of the slave past. At its core, the project at hand points to an unacknowledged and unwritten history in which the subject, the individual, is seen as a process that involves uprooting persons from the only form of sociality, the polis however conceived-and thereby attending to how the making of a slave as the progenitor of the modern individual entails an engagement with a more nuanced story of power with which former selves were associated. To excavate this long-neglected history demands configuring slavery in relationship to sovereign power. Until such time, we will not have a complicated history of power in the framing of the African past and in the early modern African diaspora: such histories are of critical importance in narrating the story of power. For this reason, I have insisted on bringing sovereign power into our discussion of the African-European encounter and the history of the African diaspora, and also to suggest that this history of the state, as one instantiation of sovereign power, represents a foundational framing for understanding how the individual (but also the ethnic and the cultural) emerges. Here it might be useful to recall my earlier claim: the African diaspora has moved away from its conceptualization rooted in state destruction-an act whereby an external or imperial assault-destroys the polity of another people, thus rendering them stateless beings. The African diaspora, in turn, has become an analytical framing that varies on a continuum of shared consciousness, culture, and racial ancestry, while the state remains noticeably absent. Stated differently, slavery once figured prominently in the discourse on power, yet in its recent history, early modern political theorists conceived of slavery as an economic system and a means for coercing labor, thereby reducing its more complicated relationship to power; even Hegel who repositions the master-slave dialectic back into the realm of power does so around the modern abstraction of the individual embodied in the slave and the master. Early modern theorists and travelers, however, were not in a position to conceive of autonomous individuals and seemed not to have lost sight of the relationship between trade and sovereignty.

#### Tracing the world-making power of self-determination builds solidarity in the face of environmental injustice, global hierarchy, and exploitation.

Ali **MEGHJI** Lecturer @ Cambridge **’20** “What can the sociology of race learn from the histories of anti-colonialism?” *Ethnicities* Online First p. SAGE p. 7-13

Getachew’s (2019: 2) book holds that while decolonization is seen as a moment of ‘nation-building [. . .] and the formation of nation-states’, instead, we ought to see anticolonial nationalism itself as an exercise in ‘worldmaking’. In other words, Getachew recasts anticolonial nationalism itself as a transnational process, seeking an equitable remaking of the world to overcome the injustices of colonialism and neo-colonialism. Getachew’s (2019: 5) book thus signals a gestalt shift in the way that she envisages anticolonial nationalism not as ‘marking the collapse of internationalism and the closure of alternative conceptions of a world after empire’, but instead as a direct, transnational confrontation to ‘the legacies of imperial hierarchy with a demand for the radical reconstitution of the international order’.

Through focusing explicitly on Nnamdi Azikiwe, W.E.B. Du Bois, Michael Manley, Kwame Nkrumah, Julius Nyerere, George Padmore, and Eric Williams, Getachew focuses on three forms of anticolonial worldmaking. Firstly, Getachew explores the anticolonial demand for the right to selfdetermination. Central to Getachew’s (2019: 75) argument is that anticolonial nationalists did not simply ‘take up’ the West’s discourse of self-determination and use it to secure their own independence, but – similarly to how Gopal (2019) looks at anticolonial iterations of liberty, freedom, and justice – through an ‘anticolonial appropriation’ such nationalists radically reconceptualised the meaning of self-determination. Thus, as it was first articulated by the League of Nations, self-determination involved ‘the consent of the governed and consultation with subject people’; however, this definition still allowed for colonialism given that ‘racially backwards people’ were said to not yet be capable of self-governance (Getachew, 2019: 42). Years after the League of Nations, the United Nations (UN) Charter of 1945 again evoked ‘human rights and equality of nations [. . .] as founding principles of a new world order’ despite the continuity of colonial rule (Getachew, 2019: 71). By contrast, anticolonial radicals – through forming organisations and conferences such as the League against Imperialism, and the Pan-African Congresses – directly highlighted the hypocrisy of the Westernized definition of self-determination. For instance, Nkrumah and Padmore organised the fifth Pan-African Congress in Manchester, 1945, where the epistemic roots were planted for self-determination to be reconceptualised as a universalist issue of human rights. Through showing how colonialism itself was a violation of human rights, the work of anticolonial nationalists radically shifted the discourse of selfdetermination such that by 1960, when Nkrumah spoke to the UN as the president of Ghana, he was able to use the principle of self-determination to show how colonialism was directly against the UN’s principles, thus leading to the Article 1514 Declaration on the Granting of Independence to Colonial Peoples and Countries.

Secondly, Getachew looks at anticolonial nationalist worldmaking through focusing on the formation of regional federations. As Getachew (2019: 113) shows, to such anticolonial nationalists, sovereignty granted through the right to self-determination was ‘meaningless in the context of international hierarchy and economic dependence’. This relates to Nkrumah’s critique of neo-imperialism, described as ‘the disjuncture between formal independence and de facto dependence’ (Getachew, 2019: 108), whereby nation states have ‘nominal freedom’ yet remain economically dependent on the Global North and thus vulnerable to political domination through financial control. In response to this neo-imperialism, radicals like Nkrumah and Eric Williams saw federations – such as the Union of African States or the West Indian Federation – as providing the potential for economic trade and development that did not require foreign intervention and reliance on the Global North. This is why, for instance, upon Ghana becoming a republic in 1960, Nkrumah’s nationalism also involved successfully advocating for a clause in the constitution that conferred on the parliament ‘the power to provide for the surrender of the whole or any part of the sovereignty of Ghana’ once a Union of African States was formed (Getachew, 2019: 107): national independence was thus connected to an embracing of anticolonial internationalism.

Connected to such building of federations, which ultimately failed, Getachew explores the final form of anticolonial nationalist worldmaking: the demand for a New International Economic Order (NIEO). Getachew thus shows how ‘second wave’ anticolonial nationalists, such as Michael Manley and Julius Nyerere, developed Nkrumah’s critique of neo-imperialism to show how formerly colonized nations were still vulnerable and exploited in an unequal global political economy – if not by other nations, then by private corporations. This meant that not only were the newly independent nations unequally integrated into the world economic system, but that their efforts of state building were also much more susceptible to the fluctuations of the international markets and private, corporate interests. Thus emerged the demands for a New International Economic Order (NIEO). The Declaration for the Establishment of an NIEO, put to the UN in 1974, challenged the way that the UN’s General Assembly – where each member has one vote – has the power to issue legally binding international economic policy. Anticolonial nationalists, such as Nyerere, pointed out that such formal, legislative equality that was granted to formerly colonized nations was not translated into a substantive equality – as Getachew (2019: 93) summaries: ‘to say that Jamaica or Tanzania and the United States were equal members of the international order obfuscated the outsized economic dominance that the United States exercised and could deploy to compel dependent states’. Thus, Nyerere argued that an NIEO was needed such that newly independent states could have the freedom to pursue their own economic programmes, including the ability to nationalize industries under private control. To such nationalists, this NIEO was in fact a necessary prerequisite to achieve the UN’s founding principle for international order: that of sovereign equality. In other words, anticolonial radicals used the principle of national sovereignty, and economic control over one’s own nation, again as a process through which we could achieve an anti-imperial world order.

At the heart of Getachew’s (2019: 2) book, therefore, is the principle that ‘decolonization was a project of reordering the world that sought to create a domination free and egalitarian international order’. Anticolonial nationalism, read through this lens, despite evoking principles of self-determination and national sovereignty, was always concerned with the grander transnational project of remaking the world in an equitable fashion.

Stretching the sociology of race across time and space

While my review of these three books’ arguments is fairly brief, I hope it is already apparent that despite making discrete arguments and contributions, they each share some fundamental similarities. Throughout the books, we see recurrent figures mentioned – from Du Bois, Padmore and Nkrumah, through to Gandhi, Churchill, and Woodrow Wilson – as well as analysis of key institutions and conferences – from the Gadar Party, based on the West Coast of the United States campaigning for Indian anti-colonialism, through to the League against Imperialism and the Pan-African Congresses. I want to now develop this review by focusing on three particular ways that these three books’ transnational and historical scopes push forward the sociology of race.

Racism at home, imperialism abroad

Firstly, each of these three books makes the point that there is an inherent connection between racism ‘at home’ in the West, with Western practices of colonialism, imperialism, and neo-colonialism ‘abroad’. Desai’s (2020) discussion, for instance, interrogates how Du Bois saw racialised capitalism as the binding factor between the United States’ exploitation of Black Americans with the British empire’s colonial apparatus, and how ‘whiteness’ offered a symbolic space of purity – a material and psychological wage – that impeded the white workers across the West to endorse an anti-imperialism. In his critique of racial capitalism, therefore, Du Bois argues that ‘the English working classes are exploiting India [. . .] and the working classes of America are subjugating Santo Domingo and Haiti [. . .] He is a co-worker in the miserable modern subjugation of over half the world’ (quoted in Desai 2020: 144). Similarly, Gopal (2019: 284) questions: ‘How could the problem of race in the context of global imperialism be addressed in its specificity and as it intersected with the question of class and the exploitation of labour?’ In exploring this question through the lens of dissent against the British empire, Gopal (2019: 441) presents the work of anticolonial Marxists – such as C. L.R James, Padmore, and Eric Williams – each of whom stressed that ‘if empire was to be left behind, then the buccaneering capitalism that it had propagated would also need to be replaced with a more radically egalitarian system’. In advocating for a new ‘radically egalitarian’ alternative to global capitalism, these radicals sought to not just free those newly independent nations from the Global North’s economic control, but also those ‘postcolonial citizens’ exploited in the metropoles itself. Lastly, Getachew (2019: 20–21) discusses the notion of a ‘global Jim Crow’, highlighting how rather than being an idiosyncrasy of the US South, ‘the color line was an international phenomenon of which segregation and racial domination in the United States were only a domestic iteration’.

Indeed, it may seem almost too obvious of a point to make that racism is connected to the processes of colonialism and neo-colonialism. After all, ‘the concept of race was thus the glue that stuck the colonial world order together, as it became common-sense knowledge that there was a global racial hierarchy which permitted the colonization of the “lesser” races by the dominant white Europeans’ (Meghji, 2020a: 4). Nevertheless, if we look at dominant approaches in the sociology of race, then such transnational connections tend to be elided. Instead, much sociology of race tends to be characterised by a methodological nationalism in which it becomes sociologically viable – and advisable – to study racism within the confines of particular, discrete nation states (Meghji, Forthcoming). However, such methodological nationalism is not analytically useful for our current predicaments. It is the same social system that exploits the labour of children in China to make electronic goods, that exploits the (disproportionately Black and Brown) zero-hour contracted truck driver who delivers this product to its eventual owner in the West; it is the same imperialised-racialised principle that Islam is opposed to modernity that justifies the state surveillance of Muslims under the Patriot Act in the United States and the Prevent counter-terrorism programme in Britain, that justifies Western military intervention in the Middle East under the guise of civilizing the backwards world. While neither Getachew, Desai, or Gopal’s books are explicitly about the links between racism and imperialism, they each highlight that there is a radical tradition of thought which has always analysed these two processes in tandem with one another. The fact that this tradition already exists pushes me to my next point, as I argue that the sociology of race needs to adopt a more historical approach.

Looking backwards to move forwards

While each of the three reviewed books use historical methods, each of them also reflects on our present conjunctures. Getachew (2019: 181) points out that the ‘worldmakers of decolonization’ offer an intellectual tradition through which to think about contemporary transnational movements such as ‘the Movement for Black Lives, the Caribbean demand for reparations for slavery and genocide, and South African calls for a social and economic decolonization’. Similarly, Gopal (2019: 448) argues the dispelling the myth of British colonial benevolence, and centering anticolonial agency, allows us to both move beyond the idea that Britain is a global superpower that has the legitimacy to intervene across the globe, as well as allowing ‘Britons to lay claim to a different, more challenging history [. . .] which can draw on multiple historical and cultural resources’. Lastly, Desai (2020) argues that his book highlights historical themes that still shape the present day, such as the United States’ claim of being the champion of liberalism and democracy while it still routinely kills many of its citizens (and those around the world).

In short, therefore, each of the three authors stress the necessity of having a historical sensibility to comprehend current situations and social processes. At the very same time as they are developing such temporal linkages, however, we are seeing increased attempts within the sociology of race to bifurcate the study of racism away from its historical roots in colonialism (and consequently, its contemporary basis in neo-colonialism). If we take critical race theory, for instance, Bonilla-Silva (2015: 74) even goes as far as to say that this paradigm ought to move beyond ‘the sins [of the] past (e.g., slavery, colonization, and genocide)’ in studying the ‘contemporary foundation’ of racism. Of course, Bonilla-Silva has apt reasons for his methodological scope – by reducing racism to being a consequence of past events, we lose sight of how racism continues because it still benefits people in the present day, who consequently maintain an interest in reproducing it. Nevertheless, we have to question whether being captured in a methodological ‘presentism’, which explicitly attempts to bifurcate the study of the present from its past, is analytically viable when it comes to the processes of racialisation and racism.

Very often, for instance, what we immediately think of as a social process specific to our present racialised social structure in fact has a much longer history informed by the logics of coloniality. For instance, consider the case of the militarisation of the police in the United States – a key issue in contemporary racism. As Go (2020) shows, such militarisation of the United States’ police started in the early 20th century primarily as a means of punitively surveying and controlling the racially subdominant. However, the tactics used by this police – such as the creation of mobile squads and intelligence divisions – derived from the United States’ military practices in their colonies (Go, 2020). In this regard, Go creates a temporal link between a contemporary issue of police militarisation with its historical origins, and also a transnational link between ‘racism at home’ with the US’ ‘imperialism abroad’ in a way that transcends bifurcated understandings of racialized processes.

Without necessarily having it as their primary focus, therefore, Getachew, Gopal, and Desai each show the possibilities for social analysis that can be opened up if we retain a historical focus when looking at contemporary society. Through appreciating the historical linkages with contemporary racism, we become better placed to connect with the various intellectual paradigms which dedicated themselves to dismantling this system in the fight for social justice. It is this theme of social justice that we now turn to.

Towards anti-racist, anti-colonial solidarities

A recurrent theme runs through each of the reviewed books: the importance of forging transnational solidarities. Gopal (2019) shows how anticolonial radicals in Britain centred solidarity – in the sense of multicultural, transnational, crossorganisational coalitions – in their struggles against the British empire, meaning that thinkers in the metropoles, such as Frederic Harrison and Arthur Ballard, came to argue that the British ruling class’ fascism in the colonies, in the name of capital accumulation, could be connected with their exploitation of white British workers. Similarly, Desai’s (2020: 45) concept of ‘transnational refraction’ was built around the premise that anti-imperialists thought about colonialism and racism through the sense of shared struggle and solidarity, citing, for instance Saint Nihal Singh’s argument that there was a fundamental ‘link between the Asian migrant laborer [in the United States], the African American subject, and the colonized Indian, each connected the other by the sheer fact of being on the wrong side of the color line’. Desai (2020: 199) even concludes his book with the assertion that such transnational refraction is a prerequisite for solidarity, when he comments that: ‘solidarity emerges only out of a wilful act of seeing through the eyes of another, whose life we can only understand in glimpses’. Lastly, Getachew (2019: 145) too notes that anticolonial nationalists ‘fashioned Third World solidarity as a form of international class politics, and demanded redistribution on the basis that postcolonial states had in fact produced the wealth the West enjoyed’.

Each of these authors focuses on transnational, multicultural, multiorganisational forms of solidarity not because it is historically interesting, but because history has shown us that these forms of solidarity are successful and necessary in the struggles for social justice. I make this point not because the sociology of race is wilfully ignoring the importance of such solidarity, but because the issues of racism facing us in the contemporary and future world need to replicate these forms of solidarity fostered by the anticolonial radicals recounted in these three books. When we think of the climate crisis, for instance, a solidarity needs to be forged between the poor workers across the West (many of whom areracialised as Black and Brown) who are disproportionately exposed to air pollution, with the environmental destruction faced by indigenous people across Latin America, Canada, the United States, Australia, and New Zealand in the name of capital accumulation, who also in turn need to form a solidarity with those in South Asia facing starvation due to droughts, who in turn need to form solidarities with those in the Caribbean, Mozambique, and Zimbabwe, where cyclones and hurricanes have been creating humanitarian crises. When we think of Islamophobia, we need to form a solidarity between those campaigning against the punitive surveillance of, and state violence towards, Muslims in the West, with those campaigning against the Uyghur detention camps in China, and the Hindutva violence towards Muslims in Kashmir. When it comes to race and racism, we are always talking about transnational, historically, epistemically, and spatially connected social processes, and – as Getachew rightfully highlights – ‘worldmaking’ processes of inequality require equally global solidarities and projects of resistanc**e.**

#### Our alternative – We should adopt the principle of sovereignty as non-domination. Non-domination flips responsibility and accountability against powerful states. The alternative proves the international community has a responsibility to secure the background conditions that end neo-colonialism and indirect hierarchy.

Adom **GETACHEW** Poli Sci @ Chicago **’19** *Worldmaking after Empire* p. 30-34

Toward a Postcolonial Cosmopolitanism

Theorizing from the specificity of the postcolonial condition also offers critical resources in normative debates about sovereignty and the international order. Against the backdrop of self-determination’s fall, political theorists and philosophers reframed their questions about justice and legitimacy from a global perspective. Historically, these disciplines viewed the domestic sphere and particularly the “sovereign state as the consummation of political experience and activity” and thus limited normative theorizing to questions of domestic politics.68 However, beginning in the 1970s and in a more sustained fashion after the end of the Cold War, the global turn in political theory questioned this disaggregation of the domestic and international and subjected the international to normative theorizing. Fueling this body of work was a confrontation with the nation-state’s empirical and normative limits. On the one hand, the stylized self-sufficient state, which served as the backdrop for John Rawls’s A Theory of Justice, appeared entirely out of sync with the growing interdependence wrought by economic globalization. In his early critique of Rawls’s assumptions about self-sufficient states, Charles Beitz drew on the growing role of multinational corporations and transnational capital flows to argue that “international economic cooperation creates a new basis for international morality.”69 For Beitz and the field of global justice that emerged in the wake of this intervention, this account of economic globalization made it possible to theorize redistributive obligations beyond the state.

By the end of the Cold War, the growing layers of international legal, political, and economic interdependence also opened up new possibilities for rethinking the political institutions of the international order. In this context, a “fortress-like conception of state sovereignty,” which historically gave states a monopoly on internal political and economic decision-making, was giving way to international institutions and particularly international human rights law that sought to limit and tame state action.70 According to Habermas, these developments signaled a growing transformation of “international law as a law of states into cosmopolitan law as a law of individuals.”71 In this context, Habermas and others have examined the prospects for a constitutionalization of international law that does not aim at the formation of a world state, but disaggregates sovereignty such that the limited functions of securing peace and protecting human rights are lodged in a supranational institution while intermediary and regional institutions address arenas of growing interdependence such as economic and environmental policy.72

While the field of cosmopolitan political theory includes debates that range from global distributional justice to the constitutionalization of regional and international organizations, a central assumption of this perspective is that we now occupy a post-Westphalian world order. On this view, an international order governed by the principles of state sovereignty, equality, and nonintervention can be dated to the 1648 Treaty of Westphalia and was progressively expanded and extended in the course of the nineteenth and twentieth centuries. As noted above, decolonization is often viewed as the culmination of this process. At the same time, this moment of its universalization is said to coincide with economic and political transformations that chipped away at the normative model of the “self-determining sovereign national state.”73 Thus, while decolonization made the Westphalian model universal, it quickly became “an anachronism.”74

This invocation of “Westphalian sovereignty” is often taken to be a conceptual construct rather than a lived reality. But even when this is acknowledged, the division of Westphalian and post-Westphalian elides the continuities between our international past and present by obscuring the ways in which empire was and continues to be constitutive of international society. An expansive view of empire as a practice and structure of unequal integration rather than simply alien rule highlights the deep continuities between the Westphalian and post-Westphalian world orders. For instance, far from being unprecedented, contemporary economic globalization should be situated within a long history of an imperial global economy. The “density, the speed, and the impact of the global flows” that emerged from the first colonial encounters in the Americas were already planetary in the fifteenth century and restructured political and economic relations within and beyond the Atlantic world.75 This economic integration often took the form of a “non-colonial imperialism” that secured economic access and domination through indirect forms of coercion.76 Contemporary conditions—such as the outsized power of private corporations, the role of international institutions in ensuring the unfettered movement of capital, and the inequalities this era of globalization has generated—build on these imperial foundations and reproduce the logics of unequal integration.

And as was the case prior to decolonization, relations of economic dependence and inequality are often coupled with legal and political modes of unequal membership in international society. While decolonization is associated with the extension of formal rights to all states, legal handicaps written into the process of decolonization set limits on the sovereignty of postcolonial states.77 Thus, even at the moment associated with the culmination of Westphalian sovereignty, juridical equality was aspirational rather than fully realized. More recently, international lawyers and scholars of international relations have abandoned even the normative and aspirational commitment to sovereign equality, arguing for a return to modes of conditional and limited membership for states deemed outlaws, failed, or rogue.78 The explicit defense of a hierarchically organized international order coincides with the growing power of institutions like the UN Security Council and the unilateralism of the United States.79 Rather than view the international order through the dichotomy of Westphalian and post-Westphalian, we should understand it as an imperial world order that was challenged by projects of anticolonial worldmaking and was reconstituted.

The persistence of unequal integration and hierarchy calls for a postcolonial cosmopolitanism that recenters the problem of empire. Drawing on the critique of international hierarchy and the anticolonial efforts to build a world after empire, which are reconstructed in the following pages, this model of cosmopolitanism is less aimed at the limits of the nation-state and more concerned with the ways that relations of hierarchy continue to create differentiated modes of sovereignty and reproduce domination in the international sphere. As described above, hierarchy designates not hegemony, but processes of integration and interaction that produce unevenly distributed rights, obligations, and burdens. These processes of unequal integration are structural and embedded in the institutional arrangements of the international order. They create the international conditions of ongoing imperial domination.

With its critical and diagnostic orientation focused on the present configurations of international hierarchy, the normative and utopian core of a postcolonial cosmopolitanism remains the principle of nondomination at the center of anticolonial worldmaking.80 Nondomination recasts the current configurations of international hierarchy as infringements on collective projects of self-government. This approach contrasts with an account of the injustices of the international sphere that is primarily concerned with the violation of individual human rights. While international human rights protections have provided important resources in challenging international hierarchy and can be combined with collective claims for self-government, on their own they offer a limited account of the wrongs involved.81 For instance, the expansive claims of private corporations not only undermine individual human rights but also threaten the capacity of self-government insofar as corporate prerogatives erode guarantees secured through state constitutions and national legislation. An emphasis on nondomination thus broadens our account of the injustices that unequal integration and international hierarchy engender. Moreover, as the examples of anticolonial worldmaking suggest, realizing the international condition of nondomination necessary to self-government can extend beyond a defense of the state to include more demanding internationalisms.

In this dual focus on hierarchy and nondomination, a postcolonial cosmopolitanism offers a more circumspect approach to the antistatist orientation of the cosmopolitan turn in political theory. In championing the equal moral worth of persons against the morally arbitrary nature of nation-states, cosmopolitan theorists have advocated taming the state through international law and have expanded the reach of our political and moral obligations. However, this privileging and prioritization of the moral worth of individuals coincides with the normative diminution of collective claims to sovereignty and self-determination, which have historically served to restrain imperialism. As Jean Cohen has argued, in “prematurely drop[ping] the concept of sovereignty” and “assum[ing] that a constitutional cosmopolitan legal order already exists which has or should replace international law,” cosmopolitans risk “becoming apologists for neo-imperial projects.”82 Viewing sovereignty as primarily an impediment to securing the rights of individuals provides cover for imperial practices cynically masked as humanitarian efforts and leaves insufficient normative resources to distinguish and critique imperial and hierarchical curtailments of sovereignty.

This is not an argument for retreating into a defensive sovereigntist position, which cannot provide adequate critical and normative resources to address the contemporary dilemmas of the international order, and it should be clear that the postcolonial approach outlined here does not offer an exhaustive theory of the international order. But in returning to the problem of empire, it provides a readjustment of what we take to be the central conundrums and predicaments of international politics. Moreover, it reminds us that claims of sovereignty and sovereign equality not only have preserved the state against claims of international justice by creating a hermetic seal but also have served as the foundation of anti-imperial visions of international justice**.** These principles provide bulwarks against hierarchy and resources for resisting domination in the international sphere, while also making possible ambitious visions of the international redistribution of political and economic power**.**

### t – 1nc

#### Topical affirmatives must defend that the United States federal government should substantially increase prohibitions on anticompetitive business practices by the private sector by at least expanding the scope of its core antitrust laws.

#### The affirmative is not topical. “United States federal government” means the three branches of the central government – the affirmative does not advocate action by the USFG.

Organisation OECD for Economic Co-operation and Development Council ’87 “United States,” *The Control and Management of Government Expenditure*, p. 179]

1. Political and organisational structure of government

The United States of America is a federal republic consisting of 50 states. States have their own constitutions and within each State there are at least two additional levels of government, generally designated as counties and cities, towns or villages. The relationships between different levels of government are complex and varied (see Section B for more information).

The Federal Government is composed of **three branches**: the legislative branch, the executive branch, and the judicial branch. Budgetary decisionmaking is shared primarily by the legislative and executive branches. The general structure of these two branches relative to budget formulation and execution is as follows.

#### The Sherman, Clayton, and FTC act are the core antitrust laws.

Gibbs ‘ND [Gibbs Law Group; “The Sherman Antitrust Act”; https://www.classlawgroup.com/antitrust/federal-laws/sherman-act/; AS]

The Sherman Antitrust Act is one of three core federal antitrust laws, along with the Clayton Antitrust Act and the Federal Trade Commission Act.

#### Prohibitions are laws.

Dictionary.com ‘ND [Dictionary.com; “Prohibition” https://www.dictionary.com/browse/prohibition; AS]

a law or decree that forbids.

#### Their interpretation explodes predictable limits – non-topical advocacies encourage the affirmative to dodge negative strategies, which are all based on a predictable reading of the resolution. The negative requires pre-round research in order to stand a chance against the affirmative’s infinite preparation and use of traditional standards of debate such as permutations – including their affirmative makes negative research an impossibility, even if we have “ground” to debate them. It greenlights any methodology or orientation that is tangentially related to the topic – negative preparation requires in depth case negatives.

#### Two impacts:

#### Procedural fairness – debate is a game and we are all here to win – debate is a competitive activity and requires game values to function – this is the largest impact – we have all chosen to spend our weekend here in order to compete.

#### Clash – you should privilege debate over different political paradigms over endorsing any one political paradigm – unflinching commitments ignore the complexity and partiality of any political theory. Promoting clash is key to interrogate complex issues, problematize solutions, and actualize any benefits of debate

## case

### case frontline – 1nc

#### Vote neg on presumption – examples of seed sovereignty and fire suppression are neither something they solve thru “counter-logistical struggles” at the individual level AND they don’t defend changing antitrust laws, NOR are their impacts anything your ballot in Wake doubles can resolve.

#### Their fire suppression example goes neg—California has partnered with tribal leaders to give Native Nations meaningful control over fire management

Sommer 20

(Lauren Sommer, 8-24-2020, "To Manage Wildfire, California Looks To What Tribes Have Known All Along," NPR.org, <https://www.npr.org/2020/08/24/899422710/to-manage-wildfire-california-looks-to-what-tribes-have-known-all-along>, JKS)

Now, Goode and other tribal leaders have been reaching out to ecologists, researchers and fire agencies about the importance of Indigenous knowledge. "I think it's really important that we don't think about traditional burning as: what information can we learn from native people and then exclude people and move on with non-natives managing the land," Middleton Manning says. "But that native people are at the forefront and leading."

Forming partnerships

With wildfires causing record-breaking destruction in the last few years, California has committed to reducing the vegetation on a half-million acres. The federal government has set a similar goal. But there's a long way to go to reach those numbers, and controlled burning can be challenging in landscapes with too much fuel. "Fire is a very wicked problem when you have years of suppression, because the longer you don't have fire in the system, the harder it is to put it back in," says Jonathan Long, ecologist with the Forest Service's Pacific Southwest Research Station. "So what we're trying to do is get these footholds." In Northern California, the Karuk and Yurok tribes have partnered with the Forest Service to manage land for traditional values and wildfire management. Studies have shown that the two goals work hand in hand. "By having these partnerships with the tribes, I think we can get that very frequent use of fire back in the system," Long says.

#### Turn - Reconstruction proves legalism could uproot white supremacy. Judicial limitations prevented Radical Reconstruction.

Aziz **RANA** Law @ Cornell **’12** Freedom Struggles and the Limits of Constitutional Continuity, 71 Md. L. Rev. 1015 p. 1039-1045

Issacharoff and Pildes correctly read the disagreement between Justice Davis and Chief Justice Chase as one concerning whether the Court should emphasize a rights-based or "institutional-process oriented view" of the Constitution during an emergency.'" But they never fully locate this debate in Reconstruction politics' 2' and so miss the heat that made the disagreement (and especially Justice Davis's internal victory on the Court) so critical. Just as the colonial backdrop to the Prize Cases is today largely unacknowledged, so too have we lost sight of Milligan's significance for the very real post-Civil War possibility of comprehensive anti-colonial rupture.'2 2 Even more directly than with the Prize Cases, the Milligan decision embodies a moment in which the language of a shared constitutional tradition and the commitment to legal continuity were employed to stymie a redemptive agenda.

In order to appreciate this point, it is necessary to see the decision through the eyes of the most intensely egalitarian among the Radical Republicans, Pennsylvania Congressman Thaddeus Stevens. For Stevens, the end of the Civil War was only the beginning of what he hoped would be a comprehensive social transformation, one that re-founded the republic on principles that uprooted wholesale all the settler exclusivities of American life.'23 In his view, such a redemptive aspiration entailed more than simply the abolition of slavery, it also required a long-term project of federal supervision to eliminate those existing modes of socio-economic subordination that sustained racial domination in the South (and indeed across the country).124 Stevens envisioned a new collective order that extended beyond providing formal legal protections and voting rights to former slaves. 125 His plan went so far as to redistribute slave plantation land among freed blacks and poor whites, providing historically marginalized communities with the economic independence and material power to enjoy meaningful self-rule.12 ' According to Du Bois, writing decades later in Black Reconstruction in America, figures like Stevens and Senator Charles Sumner of Massachusetts understood that creating a truly democratic system required "land and education for black and white labor."1 27 Stevens himself remarked of newly freed slaves in December 1865, "This Congress is bound to provide for them until they can take care of themselves. If we do not furnish them with homesteads, and hedge them around with protective laws; if we leave them to the legislation of their late masters, we had better have left them in bondage." 128

For Stevens, the commitment to universal equality and the goal of complete anti-colonial rupture were not simply desirable, they were matters of essential justice dictated by God.129 Indeed, Stevens took these beliefs so seriously that he chose to be buried in a black cemetery in Lancaster as a statement of principle given the segregated character of all the white cemeteries.130 For him, Reconstruction offered a revolutionary opportunity in which, through concerted political action, the sins of American life could be extirpated and the country redeemed."' Moreover, such redemption entailed not only a total anti-colonial break, but a break from both the existing legal framework and, if need be, the very values of constitutionalism. In Stevens's view, in moments of tension, faith in the American constitutional tradition had to give way to a deeper political one. Stevens expressed this sentiment by calling for the long-term application of martial law in the South and by defending the employment of the federal military even in non-secessionist land. According to him, Reconstruction, precisely as an epochal moment of re-founding on egalitarian economic and political grounds, required the congressional use of discretionary power-enforced coercively by the strong arm of the military- in the service of political justice.132 Once more capturing the essence of Stevens's approach, Du Bois wrote of this need to privilege racial transformation over constitutional continuity: "Rule-following, legal precedence and political consistency are not more important than right, justice and plain commonsense. Through the cobwebs of such political subtlety, Stevens crashed and said that military rule must continue in the South until order was restored, democracy established, and the political power built on slavery smashed."

In many ways, Milligan highlighted the fractured nature of the Republican Party, which as early as 1866 was increasingly hesitant to pursue fundamental social change as comprehensively as Stevens desired.' 13 Justice Davis and ChiefJustice Chase were both close allies of Lincoln (the former his 1860 presidential campaign manager, the latter his Treasury Secretary). Justice Davis's sweeping civil libertarian language and curtailment of congressional authority were understood by Radical Republicans as a direct assault, by a member of their own party no less, on the federal government's capacity to pursue racially emancipatory ends.'13 Stevens excoriated the Milligan majority, declaring: That decision, although in terms perhaps not as infamous as the Dred Scott decision, is yet far more dangerous in its operation upon the lives and liberties of the loyal men of this country. That decision has taken away every protection in every one of these rebel States from every loyal man, black or white, who resides there. 1 7

Shortly after Stevens's speech, the Republican magazine Harper's Weekly further underscored the perceived connection between Milligan and Taney's infamous ruling, headlining its piece on Milligan, The New Dred Scott.' Elaborating the parallel, the article declared, "The Dred Scott decision was meant to deprive slaves taken into a Territory of the chances of liberty under the United States Constitution. The Indiana decision operates to deprive the freedmen, in the late rebel States whose laws grievously outrage them, of the protection of the freedmen's Courts. . . ."' These "freedmen's Courts," referred to in the article, embodied a separate court system established by the Freedmen's Bureau during the early days of Reconstruction to address white crimes against blacks. Such courts were seen by Radical Republicans as necessary due to the overwhelming prevalence of racial animus in ordinary civil proceedings in the South.140 The article's author worried that since the regular courts were open and functioning, Milligan would operate to undermine the legality of the Bureau's courts and to condemn former slaves to the vagaries of a legal system controlled by their ex-masters.

#### Militant preservation insufficient for freedom – non-domination requires use of state power and legal institutions to ensure positive liberty. Militancy without institution-building buys into myth of liberal autonomy.

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Gooding-Williams claims that the altercation thereby secures Douglass’s “manly independence:”49

And it [combat] is tantamount to imposing a limit on the degree to which an otherwise dominated subject depends on the will of another – to the degree to which his ability to live as he wishes depends on another’s decisions. Combat brought Douglass (“manly”) independence, because it executed his determination no longer to depend for his wellbeing on Covey’s “merciful” decision not to whip him. […] In keeping with the republican tradition of political theory, Douglass represents independence as freedom and freedom as nondomination. As he describes the fight with Covey, it secured him a limited freedom by establishing a limit to domination.50

But how exactly does physical combat secure “manly independence” in the form of freedom as non-domination? Furthermore, is such a declaration of independence consistent with the republican tradition?

Douglass himself recounts that the altercation left him enslaved in “form” only, not in “fact.”51 Here he recounts the encounter in Narrative:

This battle with Mr. Covey was the turning-point in my career as a slave. It rekindled the few expiring embers of freedom, and revived within me a sense of my own manhood. It recalled the departed self-confidence, and inspired me again with a determination to be free. The gratification afforded by the triumph was a full compensation for whatever else might follow, even death itself. He only can understand the deep satisfaction which I experienced, who has himself repelled by force the bloody arm of slavery. I felt as I never felt before. It was a glorious resurrection, from the tomb of slavery, to the heaven of freedom. My long-crushed spirit rose, cowardice departed, bold defiance took its place; and I now resolved that, however long I might remain a slave in form, the day had passed forever when I could be a slave in fact. I did not hesitate to let it be known of me, that the white man who expected to succeed in whipping, must also succeed in killing me.52 And again, he recounts the encounter in My Bondage, My Freedom, which figures prominently in Gooding-Williams’s analysis:

Well, my dear reader, this battle with Mr. Covey,—undignified as it was, and as I fear my narration of it is—was the turning point in my ‘‘life as a slave.’’ It rekindled in my breast the smouldering embers of liberty; it brought up my Baltimore dreams, and revived a sense of my own manhood. I was a changed being after that fight. I was nothing before; I was a man now. It recalled to life my crushed self-respect and my self-confidence, and inspired me with a renewed determination to be a freeman. […] After resisting him, I felt as I had never felt before. It was a resurrection from the dark and pestiferous tomb of slavery, to the heaven of comparative freedom. I was no longer a servile coward, trembling under the frown of a brother worm of the dust, but, my long-cowed spirit was roused to an attitude of manly independence. I had reached the point, at which I was not afraid to die. This spirit made me a freeman in fact, while I remained a slave in form. When a slave cannot be flogged he is more than half free. He has a domain as broad as his own manly heart to defend, and he is really ‘‘a power on earth.’’ While slaves prefer their lives, with flogging, to instant death, they will always find Christians enough, like unto Covey, to accommodate that preference. From this time, until that of my escape from slavery, I was never fairly whipped.53

Violent resistance stayed the hand of Douglass’s would-be aggressors and reinvigorated his “determination” to run away. In both passages, Douglass highlights the newfound “form” of his freedom had rekindled a “crushed” sense of self-confidence and self-respect. Note that in the passage from Bondage, from which Gooding-Williams mainly draws, Douglass stresses the psychological experience of his burgeoning personal power, his lost “sense of his manhood,” and his determination to escape bondage.

Quoting extensively from Bondage, Gooding-Williams argues that Douglass’s physical prowess had secured the form of freedom because, as Douglass puts it, “a man, without force, is without the essential dignity of humanity. Human nature is so constituted that it cannot honor a helpless man, although it can pity him; and even this it cannot do long, if the signs of power do not arise.”54 The young Douglass, then, wins the “honor” of his owners that stays their hands from visiting more violence on his body and enforces a limit on arbitrary interference. While Gooding-Williams does not claim that the failure to risk death and resist one’s subjugation stymies the honor of the enslaved, he accents that a diminishing sense of selfconfidence and self-respect occasions violence at the hands of an oppressor; risking death appears to be a precondition of securing “manly independence.”55 However, while republican conceptions of freedom can encompass the moral value of self-respect and self-confidence, they are not grounded in a general “sense” of “self-reliance” nor in the temerity of a people, but in publically-accepted rule of law, which the constitutional state demands that all citizens accept. Gooding-Williams argues that the altercation with Covey demonstrates that “[s]elf-reliance, then, is antithetical to dependence on laws, books, customs, and the like.”56 Following the republican conception of liberty, the “choice situation” of a slave is not to be enslaved—by law—to gain one’s freedom through the recognition of the rights of citizenship. Republican conceptions of liberty are best suited for capturing the fact of freedom or the lack thereof, rather than its form, which delineates the requisite moral psychology for resisting oppression under institutionalized conditions of extreme duress and brutalization. To be sure, Gooding-Williams is correct to emphasize Douglass’s struggle for freedom in terms of the form of freedom, but republicanism is best suited to capture the fact of freedom.

Like other existentialist interpretations of Douglass’s encounter with Covey, notably those advanced by Lewis Gordon and George Yancy, Frank Kirkland points out that there is a “resounding […] silence” on political abolitionism and slave rebellions in theorizing Douglass’s republican politics.57 Even in the case of a victorious outcome through physical combat, as detailed in Douglass’s narration, Covey’s capacity for arbitrary interference is – by definition – intact insofar as Douglass remains a slave in “fact.” Douglass just happens to subdue Covey, but the structural inequality that defines their relationship as master and slave and conditions Douglass’s dependency on the whims of his owners remains an institutional fact. It is that systematic dependency that a republican conception of liberty helpfully illuminates as oppressive.58

Although Gooding-Williams invokes republicanism to justify redirecting practices of citizenship, he does not posit the task of securing citizenship as the moral end of enslaved Africans, one that Douglass holds dear as a political abolitionist and condoner of slave rebellions that aimed to destroy the institution of chattel slavery. Indeed, the republican framework that casts freedom as non-domination appeals to the lawful representation of persons as full citizens that would sanction either kind of action – abolition or rebellion – as emancipatory political practices that capture the “fact” of the domination of black Americans in the Southern slavocracy and the nation as a whole. The model of freedom as non-domination thus posits an essential link between the rule of law and the creation of the structural conditions of undominated choice. The democratic institutionalization of laws, under the aegis of a fairminded people, ensures that arbitrary interference in citizens’ lives is eliminated. But for this republican view of liberty to hold water, the political ideal of citizenship must be preserved. Pettit thus rejects non-foundational views that advocate self-reliance, which Gooding-Williams prizes. To be sure, Douglass having regained a sense of self-confidence and self-respect spells a decisive break in his life as a slave. The fortification of his sense of personal power—that crucially wins him the “form,” if not the “fact” of freedom—instills in him the moral courage that spurs his escape. Yet, true to his republicanism, Gooding-Williams himself observes that Douglass subsequently dedicates his life to the struggle for the constitutional rights of black Americans, that is, to achieve the “fact” of freedom.59

ii. Douglass’s Band of Brothers: Arendt’s Action-Oriented Republicanism in Antebellum & Postbellum Black Politics

In the next section, I address the issue of how—and whether—the moral ideal of citizenship can inspire plantation politics, in addition to legitimating political abolitionism and slave rebellions. Before tackling the issue, in this subsection, I assess the dimension of Gooding- Williams’s account of plantation politics that is inspired by Arendt’s political philosophy. Drawing from Douglass’s narrative of his formative experiences as a young enslaved man, he argues that a “band of brothers” won “independence” for Douglass and his friends on slave plantations through spontaneous, secretive, rule- and ruler-free plotting. The “politics” of the band of brothers “points not only to his [Douglass’s] action-in-concert and affiliation-based conception of plantation politics, but, likewise, to his rejection of the view, later embraced by Du Bois, that politics is exclusively a practice of rule.”60 His depiction of Douglass’s republicanism—indebted to his reconstruction of Arendt’s vision of politics—advances a secretive, rule- and ruler-free politics, while rejecting Du Bois’s rule- and ruler-based politics. Yet, I argue that a critical dimension of Arendt’s philosophy of freedom is missing: political action should be normatively oriented towards the rule of law and public governance, which provide the institutional conditions of democratic agency. Indeed, these normative commitments are par for the course of republican political thought generally—yet, they are precisely the features of Du Bois’s political thought that Gooding-Williams lambasts in the name of republicanism. The politics without rule that Gooding-Williams envisions is a “politics of a few […] who pledge themselves to one another, not a politics geared to ruling the many.”61 The radical potential of republican political critique lies in theorizing the expansion of the democratic public sphere for the many—that is, for all whom are oppressed and subject to the arbitrary interference and unmitigated force by the reckless and powerful. Political abolitionism and slave rebellions tap into this radical potential of the justificatory force that fuels republican accounts of progressive change.

With respect to the affiliative bond of a band of brothers as an emancipatory practice preserving political culture on slave plantations, Gooding-Williams defends concerted action flouting governance. Enslaved persons resisted subjugation by undertaking small-scale, covert, and leaderless actions, where shared black identity mediated bonds of trust and solidarity, but underdetermined collective political purpose. He details Douglass’s formative experiences joining a band of brothers:

Thrown together on Mr. Freeland’s plantation, Douglass and his fellows find themselves working the same farmland. Soon, however, they begin to consult one another, and as Douglass suggests, […] to debate and deliberate the merits of different courses of action.

Douglass and his friends (they move together), cultivate ties of loyalty, and form themselves into a band of subversive activists […] consenting through their speech, action, and mutual commitments to resist slaveholder tyranny. Together they constitute a band of ‘brothers,’ not because they have affiliative relationships to the same parent, but because they have affiliative relationships to one another – that is, because each has agreed to adopt as his own a mutually shared sense of political purpose.

As “subversive activists,” they “resist slaveholder tyranny” through speech and action that defined their freely-forged, affiliative bonds. Together, they plotted in secret to run away, but their “sense of solidarity […] [was] predicated not on obedience to a ruler but mutual commitment and self-sacrifice.”62 In the absence of readymade familial or “spiritual” bonds, a sense of solidarity arises through the small group’s plotting. Douglass acts as the “leader-asinitiative- taker” rather than “leader-as-ruler.”63 The “band of brothers” politics functions as forerunner of the ideal of the black counter-public that encompasses heterogeneous voices without devolving into a politics of rulers- and -rules.

In developing the idea of a band of brothers as an emancipatory practice, Gooding- Williams appeals to Arendt’s defense of the public sphere, where speech and deeds skirt law, while showcasing the “boundlessness” of action.64 “Free,” spontaneous action does not reveal law-like regularity in human behavior. Occasionally, Arendt appears to be suspicious of the constitution and positive systems of laws it supports, as institutional entities that limit the “boundlessness” of political freedom.65 In response to the totalitarian government of 20th-c. Europe, she countenances that technocratic rationality in the guise of law has penetrated the democratic public sphere. Her conception of political judgment and action rejects prescribed categories for judgement and action, a rejection which must be understood in light of her critique of totalitarianism and the rise of the social sphere.66 Gooding-Williams observes: “With her reference to the frailty of human affairs, Arendt recurs here to her thesis that human action tends to transgress the limits and boundaries fixed by legal rules, institutional norms, and territorial demarcations – thus, to establish relationships that cut across those limits and boundaries – and that these rules, norms, and demarcations cannot offset action’s ‘inherent unpredictability.’”67 Nevertheless, in advancing her critique of the expansion of the bureaucratic modern state, she calls for the reconstruction of the public sphere. There is a distinction, then, between the apparent “lawlessness” of free action with respect to “the frailty of human affairs” and the public rules and laws that preserve the institutional conditions of free action in the first place, in light of the threat of totalitarianism and technocratic rationality.68

The distinction is not pronounced in Gooding-Williams’s critique of plantation politics, but it has resounding implications for his presentation of the latter. Secretive collusion that is neither embedding in, nor morally oriented towards, a constitutional republic may very well be “lawless” and “leaderless,” as well as expressing a sense of solidarity, mutual support, and collective purpose, but it is unclear in which respect it secures the independence of enslaved persons.

If in order to avoid further attack and interference from their master, the young Douglass and his brothers-in-arms secretly plot to work the fields more efficiently and reach an agreement to demoralize other slaves in a display of allegiance to their owner—rather than to run away—the mere form of their actions conforms to the model Gooding-Williams describes, but it seems counterintuitive to accept that following this course of action is an emancipatory political practice.

Gooding-Williams minimizes the moral and political ideal of equal citizenship as the normative basis of republican conceptions of liberty. As a result, the normative basis of his account of emancipatory practices of slave plantation is unclear. He also unfairly criticizes Du Bois’s notion of black leadership as “dominating” black masses because he minimizes not only in Douglass, but in Du Bois too, the ideal of citizenship. The talented tenth are responsible for combatting the so-called “Negro problem.” Gooding-Williams characterizes their efforts in terms of 1) combatting white racism and 2) the general unpreparedness of the black masses to master conventions for participating in the basic structure. In “uplifting” the black masses to cultural literacy, the talented tenth integrate them into basically just institutions. On his characterization of Du Bois’s view of black enfranchisement, he argues that Du Bois champions assimilation through self-assertion: he underscores white racism, but the existent basic structure—as well as American folkways—are sound and recommendable for black mastery. However, depicting Du Bois’s account of leadership as dominating the black masses would obtain if and only if Du Bois fails to posit a critical link between black leadership and the moral ideal of civic enfranchisement, construed as collective social and political self-determination, which is not the case.69 That one accepts the moral and political ideal of citizenship does not mean that the existent normative design of the basic structure does not require revision. The talented tenth, writes Du Bois, “must be prepared to fight an army of devils” and sacrifice themselves in order to achieve the civic enfranchisement of their people.70 Du Bois describes the talented tenth as “plead[ing] for black men’s rights.”71 The first generation of the talented tenth, which includes Douglass, Du Bois identifies as political abolitionists.72 With the passage of Reconstruction Amendments that emancipated black Americans, the talented tenth [t]hrough political organization, historical and polemic writing and moral regeneration, […] strove to uplift their people. It is a fashion of today to sneer at them and to say that with freedom Negro leadership should have begun at the plow and not in the Senate—a foolish and mischievous lie; two hundred and fifty years more the half-free serf may toil at his plow, but unless he has political rights and righteously guarded civic status, he will still remain the poverty-stricken and ignorant plaything of rascals, that he now is.73

With Emancipation, in order to substantiate freedmen’s newfound moral status as legal members of the American civic community, the talented teach must “righteously guard their civic status.” Instead, Gooding-Williams equates black leadership with the domination of freedmen, whereby they are mastered and subject to their elitist arbitrary interference. He omits that leadership oriented towards participation and inclusion in the modern state is foundational to republican conceptions of liberty, which, as I have demonstrated in the previous sections, are founded on the advocacy of the political ideal of citizenship, and, consequently, are predicated on ruler- and rule-based politics.74 Moreover, Douglass himself was a Reconstruction politician who qualifies as a leader among the so-called “Talented Tenth.” Gooding-Williams instead characters a politics of rule as curating cultural authenticity, rather than encouraging contestation of the organization of the basic structure on the basis of the moral—and political—ideal of citizenship. He thus identifies Du Bois’s account of political legitimacy with the curation of authentic expressions of black cultural identity, rather than with political enfranchisement.75

To be sure, Du Bois later revisits his idea of the talented tenth and casts doubt on his earlier formulation of the concept. In Dusk of Dawn, he speculates about the political promise of college educated African Americans, whose allegiance to the wider community appears undermined by material interests. Note that he revises his position not because he believes that middle-class black Americans dominate and interfere with the poorer black masses, but that they, as an increasingly affluent group, have grown indifferent to the plight of working class African Americans. This is a concern about leadership in the black community that is still manifest today.76 The political promise and pitfalls of black leadership leave unanswered the question of how to struggle for civic enfranchisement, given the re-entrenchment of the federal neglect of the black community. The latter issue requires redress through the basic structure and norms of public governance.

Consider Keeanga-Yamahtta Taylor’s recent discussion of black leadership and electoral politics. Taylor writes

the pursuit of Black electoral power became one of the principal strategies that emerged from the Black Power era. Clearly it has been successful for some. But the continuing crises for Black people, from under-resourced schools to police murder, expose the extreme limitations of that strategy. The ascendance of Black electoral politics also dramatizes how class differences can lead to different political strategies in the fight for Black liberation.77

As I hope I have shown in here and in earlier chapters, for Du Bois, the task of civic enfranchisement is not reducible to electoral politics; yet the radical potential of the republican critique of freedom lies precisely in delineating the challenge of including black interests in public governance. On the heels of the Black Lives Matter Movement, racial gerrymandering and voter suppression are making gross inroads in contemporary American democracy. Representing an internally differentiated, class sensitive, and comprehensively inclusive conception of “black” interests in public governance remains necessary to achieve civic equality. Indeed, whether whites are inclined to represent black interests in national politics is unclear.78 What is clear is the no one can “stand aside as critical and rather pessimistic spectators; when in fact the burden [of the Negro problem] belongs to the nation, and the hands of none of us are clean if we bend not our energies to righting these great wrongs.”79

#### Total critique of universality and modernity consolidates colonial imaginaries of people of color as wholly Other.

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Deterritorializing Social Thought

Césaire and Senghor were canny readers of their historical conjuncture in relation to the macrohistorical trends of imperial history. Like many of their contemporaries— Third World nationalists, regionalists, panethnicists, and socialist internationalists— they were acutely aware that decolonization would entail the reconfiguration rather than the elimination of imperial domination. But rather than offer a territorial response to this threat, they formulated epochal projections and projects. Their ambition exceeded a commitment to protecting the liberty and improving the lives of the populations they represented. They also felt themselves to be implicated in and responsible for remaking the world and redeeming humanity. Their interventions thus remind us that during the postwar opening, the world- making ambition to reconceptualize and reorganize the global order was not the exclusive preserve of imperial policymakers, American strategists, international lawyers, or Third International Communists. But to even recognize this dimension of anticolonialism requires us to move beyond the dubious but entrenched assumption that during decolonization many in the West thought globally while colonized peoples thought nationally, locally, concretely, or ethnically— and those that didn’t were somehow inauthentic.

Scholarship long promoted one- sided understandings of Césaire and Senghor as either essentialist nativists or naive humanists.18 Tied to the territorialism that dominated histories of decolonization, Negritude, whether embraced or criticized, was treated as an affirmative theory of Africanity rather than a critical theory of modernity**.** Scholars have typically viewed their writings as expressions of black subjectivity or anticolonialism and read their political proposals reductively, seeking information or messages, or in relation to Césaire’s or Senghor’s public records after decolonization. Like The French Imperial Nation- State, this book endorses more recent attempts to understand these figures’ writings as multifaceted engagements with modern politics, philosophy, and critical theory.19 I extend the eff ort of my earlier book to treat Césaire and Senghor as situated thinkers whose reflections illuminate not only the black French or colonial condition but their own historical epoch and the larger sweep of political modernity by engaging the elemental categories around which political life at various scales was organized. Regarding them as epochal thinkers and would- be world makers who grappled with global problems at a historical turning point raises questions about territorial assumptions underlying strong currents in boThEurope an historiography and postcolonial criticism, assumptions that oft en lead scholars to relate texts to the ethnicity, territory, or formal political unit to which their authors appear to belong or refer.

Critics often treat Césaire or Senghor as representatives of black thought or African philosophy whose thinking may have been influenced by French or Europe an ideas but whose writings refer to local lifeworlds that are somehow separate from “the West.”20 But their reflections should be read in relation to contemporaneous attempts, between the 1920s and 1960s, to overcome conventional oppositions between speculative rationalism and positivist empiricism by developing concrete, embodied, lived, intuitive, or aesthetic ways of knowing through which to reconcile subject and object, thought and being, transcendence and worldliness. Their work thus exists within a broad intellectual constellation including not only surrealist modernism or Bergsonian vitalism but ethnological culturalism, Christian personalism, and Marxist humanism (as well as Jewish messianism and philosophical pragmatism).21 They also contributed to the critical engagement with instrumental reason, state capitalism, the reification of everyday life, the domestication of western Europe an socialism, and the limitations of Soviet Communism.22 Yet these thinkers are rarely included in general considerations of interwar philosophy or postwar social theory. This despite their novel attempts to link the search for a concrete metaphysics, poetic knowledge, and lived truth to a postnational political project for colonial and human emancipation that built upon traditions of mutualist socialism, cooperative federalism, and cosmopolitan internationalism. Or their attempts to reformulate humanism and universalism on the basis of concrete historical conditions and embodied experience.

The point is not to reduce their thinking to continental or hexagonal parameters nor speciously to elevate or legitimate it by placing it alongside canonical works. It is, rather, to use their work and acts to rethink, or unthink, the supposedly European parameters of modern thought. Just as Césaire and Senghor refused to concede that “France” was an ethnic category or continental entity, they resisted the idea that they should approach modern philosophy as foreigners. So rather than debate whether their writings were African- rooted or European- influenced, we should read them as postwar thinkers of the postwar period, one of whose primary aims was precisely to question the very categories “Africa,” “France,” and “Europe” through an immanent critique of late- imperial politics. They attempted in ways at once rooted and global to grapple with human and planetary problems at a moment of world- historical transition. Understandable fears of totalizing explanation and Eurocentric evaluation have led a generation of scholars to insist on the singularity of black, African, and non- Western forms of thought. But we now need to be less concerned with unmasking universalisms as covert Europe an particularisms than with challenging the assumption that the universal is European property. My aim is not to provincialize Europe but to deprovincialize Africa and the Antilles. Dipesh Chakrabarty’s landmark critique demonstrated that supposedly universal categories were in fact produced within culturally particular European societies. 23 Césaire’s and Senghor’s multiplex reflections on Negritude resonate in many ways with Chakrabarty’s argument about the existence of incommensurable forms of being and thinking that are often ungraspable by the rationalist protocols of modern historiography.24

But their thinking also provides a perspective from which to question Chakrabarty’s critique of general, abstract, and universal thought from the standpoint of local, concrete, and particular lifeworlds.25 It reveals how the “provincializing Europe” argument depends partly on a set of territorial assumptions about lifeworlds; how it tends to collapse people, place, and consciousness and to ethnicize forms of life; how it equates the abstract and universal with “Europe” and the concrete and lived with India or Bengal. Chakrabarty argues persuasively that there is an intrinsic connection between forms of life and forms of thought but does not then inquire directly into the scales of lifeworlds in relation to which thinking is oft en forged. He seems reluctant to recognize that large social formations and political fields, such as empires, are also concrete places.

Yet if there exists a determinate relationship between dwelling and thinking and if in certain cases we identify an empire to be the relevant social formation within which lives are lived and consciousness shaped, then that imperial form and scale, rather than a culture or ethnicity, must be relevant for understanding a form of thought. If we begin with empire as our unit of analysis, the case for insisting on cultural singularity or epistemological incommensurability weakens.

An imperial optic, for example, may help us to appreciate how postwar Martinique or Senegal really were “European” places and integral parts of “France.” Or that putatively French or Europe an forms of thought were elaborated through the dialogic exchanges, antagonistic confrontations, and transcontinental circulation that characterized life and thought in mid- twentieth- century Europe an empires. It then follows that the supposedly Europe an categories of political modernity belong as much to the African and Antillean actors who coproduced them as to their continental counterparts. These black thinkers also produced important abstract and general propositions about life, humanity, history, and the world**.**

My argument pushes against a recent tendency in comparative history and colonial studies to insist upon multiple, alternative, or countermodernities, thus granting to Europe possession of a modernity which was always already translocal. What is the analytic and political cost of assigning to Europe such categories or experiences as self- determination, emancipation, equality, justice, and freedom, let alone abstraction, humanity, or universality? Why confirm the story that Europe has long told about itself? Modern, concrete universalizing processes (like capitalism) were not confined to Europe. Nor were concepts of universality (or concepts that became universal) simply imposed by Europeans or imitated by non- Europeans. They were elaborated relationally and assumed a range of meanings that crystallized concretely through use. Moreover, African traditions of being and thinking entailed abstract ways of conceptualizing humanity. All humanisms, after all, are rooted in concrete ways of being, thinking, and worlding.

Chakrabarty recognizes that the intellectual heritage of Enlightenment thought is now global and that he writes from within this inheritance. He concludes with an eloquent reminder that “provincializing Europe cannot ever be a project of shunning Europe an thought. For at the end of Europe an imperialism, Europe an thought is a gift to us all. We can talk of provincializing it only in an anticolonial spirit of gratitude.”26 So clearly he is not himself a provincial or nativist thinker. Yet this conception of gratitude concedes too much at the outset— to Europe as wealthy benefactor and to a liberal conception of private property. For if modernity was a global process its concepts are a common legacy that already belong to all humanity; they are not Europe’s to give. They are the product of what Susan Buck- Morss has recently called “universal history,” the “gift of the past,” and “communism of the idea.”27

In short, Césaire’s and Senghor’s postwar work invites us to deterritorialize social thought and to decolonize intellectual history. This is not matter of valorizing non- European forms of knowledge but of questioning the presumptive boundaries of “France” or “Europe” themselves— by recognizing the larger scales on which modern social thought was forged and appreciating that colonial societies produced self- reflexive thinkers concerned with large- scale processes and future prospects. The point is not simply that Césaire and Senghor were also interested in humanism, cosmopolitanism, and universalism. More significantly, they attempted to reclaim, rethink, and refunction these categories by overcoming the abstract registers in which they were conventionally formulated and attempted to realize them through intercontinental political formations.

#### Fugitivity fails – to be in and not of the world isn’t a productive contradiction – being of this world is crucial to change it.

Carruthers, dir. BYP100, 16

(Charlene <http://bostonreview.net/forum/black-study-black-struggle/charlene-carruthers-charlene-carruthers-response-robin-kelley>, 3-7)

Robin Kelley’s advice to black students in the academy—to heed the call of Fred Moten and Stefano Harney to be in but not of the university—reminds me of a contradiction I first heard from black church folks. They encouraged Christians to be in the world and not of it. The saying, which comes from the New Testament, always puzzled me. I did not understand how I could live in the world and not be shaped or affected by those who share the world with me. How can I exist—as a black, queer, able-bodied, and cisgender woman—in the world and yet be separate from the realities, the violence, temptations, or problems my people face? Can black students today truly be in the academy and not of it? Is fugitive study possible in the face of student loan debt, pressures to graduate, and a wave of black uprisings across America? I would argue instead that activists must be both in this world and of it if we want to transform it. The answers to those questions are full of contradictions that student activists must contend with today. On the one hand, demands for more welcoming campus environments make claims on a system that was never set up to serve. On the other hand, the demand for a collegial space where one can belong is also deeply human. Students are often sold on the idea that college is such a place. There is something deeply human about that. But there is also something deeply disconnected about the idea that we can one day belong to an institution that systemically excludes most of us. As Kelley suggests, many students who are rising up and articulating demands are motivated by the sense of a broken covenant or the belief that the institutions can be better, for themselves and for black people collectively. This is a remarkable form of optimism in the midst of systemic oppressions. Whether or not this hopefulness is naïve, I believe that it reflects what young black people learn about power, how power is built, and how it can shift. Today’s black student activists, particularly those who grew up in the United States, are steeped in the neoliberalism that pushes bootstrap, individualistic, merit-based narratives as the paths to upward mobility. These students are of that world and at the same time are exploring, both within and outside of academia, alternatives to what they have learned. The beautiful part is that they are doing it collectively. The potential for radical transformation arises when student leaders, including those who are women and queer, are visible, thinking and acting together. This is the moment for student leaders to develop sharp analyses of power. If they do, the focus of their demands could shift significantly—from faculty hiring, multicultural curricula, and diversity officers to bolder initiatives.

#### Antitrust can be retooled to prioritize power over efficiency and allocate economic coordination rights.

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.

#### 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.

Jedidiah **BRITTON-PURDY** Law @ Columbia ET AL ‘**20** (Additional Authors David Singh Grewal, Amy Kapczynski & Sabeel Rahman) “Building a Law-and-Political Economy Framework: Beyond the Twentieth-Century Synthesis”, 129 YALE L. J. 1784 (2020) p.1818-1823

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?

1. **Legal pessimism and the 1AC’s ideas of whiteness as an unchanging monopoly over life are wrong—resistance is possible.**

**Rana, JD Yale PhD Harvard, 17**

(Aziz, interviewed by Dan Denvir on “The Dig” podcast <https://www.blubrry.com/thedig/28578811/universalizing-american-liberty-with-aziz-rana/> roughly minutes 27-33, transcribed by Harvard Westlake)

AR: The racial ideology that then emerges to justify the strict difference between whites and blacks both serves to preserve the labor supply for plantation owners, and it also serves to enhance white solidarity and so break up various class accounts. The reason why I think its important is that today there is an extended conversation about how to think of white supremacy and, one of the ways of talking about white supremacy is to say there is a constitutive antiblackness that goes back to the very founding of the western state; that it’s just part of Enlightenment, and it’s a kind of perpetual enduring feature. But one of the things that I think the less skillful and complex versions of it tend to do is it **tends to make very difficult for us to see**, well how is that regimes of racial management changed over time? How is that white supremacy as a regime of racial control was different in the 17h versus the 18th versus 19th century. Between kind of the period of colonial settler expansion that I was describing and then the US’ emergence on the global stage in the 20th century. And It also makes it really hard to see what **ways it can be contested in the present;** it’s as if there’s no spaces for cross-racial solidarity. But if instead, you see a really complicated story about how economics and race are sort of implicated within one another and certain types of arguments about racial management emerged out of class and labor conditions. Then you can see, wait a second, **this was a place of political struggle.** **There are actual sites of resistance**. And those cites of resistance then shaped the terms of the racial politics that emerged. Now this isn’t to say that there aren’t clearly deep-seated racial and cultural judgements that are part of why it made sense to have lifetime bondage for Africans alone. But is to say that if we don’t pay attention to the **material conditions**, and we just have this kind **of permanent 500-year story of unchanging antiblackness**, **we can’t actually articulately describe the past or explain what change in the present would like.** DD: I think that’s such an important point, that these sorts of primordialist accounts of racism seem to echo primordial or biological **accounts of race**, and both are things that we should steer away from if we want to understand both how history has unfolded and avoid the sense that the state of affairs we’re living in is **inevitable and permanent.** AR: And yeah, so this is an argument that does not contest that white supremacy has been a really constitutive feature of the American project, bound to the settler past part of the troubled way in which settlerism participates in our own present. But it is to say that there are important spaces for kind of **like alternative political self-conception** that are built into the American project **that we ignore if we think of white supremacy as just like one flat feature, or even one flat thing**

. DD: And something that lacks a historical context and a political economic context. And another outcome of that I think, is the sort of framing we here from some people in the liberal establishment that we hear from people like Hillary Clinton last year is that things like economic exploitation on the one hand and racism on the other are sort of mutually exclusive problems, or that dealing with one entails some sort of tradeoff of not dealing with the other. Which then, I think, and you talk about this at the end of your book, leads to this emphasis on including a small number of women and people of color into the ranks of the ruling class instead of thinking about how to transform power relations in a way that ends the ruling class. AR: Yeah, I know absolutely. In a way this might be a useful moment to talk about, well, how is it that is that as Americans came to imagine their own past, especially in the mid 20th century, with the rise of liberal nationalism, and with the revolution being reconceived, how was slavery reconceived? And basically what happens is, not surprisingly, against the backdrop of the fact that you have all of these anti-colonial movements in the global south, you have American policy makers at home saying that “well the revolution was an anti-imperial act”. When it was actually much more complicated. It’s like anti-imperial in rejecting Britain, but on behalf of a deeper commitment to settler control and expansion. Framing the revolution as anti-imperial then also reframes like the meaning of slavery. The story then is that slavery is kind of archaic racist practice out of step with American values and principles, so what does it mean in the 20th century to take seriously the anti-imperial elements of the countries past? It means now, sort of, including African Americans and other communities within liberal society. And that mostly means ensuring that elites from minority backgrounds have access to position of power, equal opportunity, in some sense is provided. DD: And **this redemptive story, is sort of the flip side of the pessimistic story** we were just talking about AR: That’s exactly the case. What it does is it ignores how the basic bedrock structure of the US was organized through principles of subordination, control of labor and land. And that’s something to this day in the 21st century had just not been addressed. And so even if you now have like a liberal ideology of including some people, that’s a liberal ideology that’s not dealing with the structural fact of economic and political dispossession. And that’s the argument that many black radicals were making in the 1960s. And so for the liberal , like the Hilary Clinton liberal, it leads to the conclusion that since slavery really doesn’t have to do with like the embedded structure of society and racism really isn’t about the embedded structure of society that you can disconnect class domination, and various forms of economic inequality, from a commitment to racial progress. And **it ends up producing a very limited account of what you can and should do in the present. So there is a weird way in which liberal optimism and this brand of very pessimistic radicalism ends up in a kind of similar location.**

#### 8. Representing capitalism as a global totality relies on essentialist and phallocentric thinking. Capitalism becomes the force that explains everything but can only be explained in a way that entrenches its power.

J.K. **GIBSON-GRAHAM** (Julie Graham Geography @ Amherst & Katherine Gibson Inst. of Culture & Society Western Sydney) **‘6** *The End of Capitalism As We Knew It 10th Anniversary Edition* 1-5

Given the avowed servitude of left theory to left political action it is ironic (though not surprising) that understandings and images of capitalism can quite readily be viewed as contributing to a crisis in left politics. Indeed, and this is the argument we wish to make in this book, the project of understanding the beast has itself produced a beast, or even a bestiary; and the process of producing knowledge in service to politics has estranged rather than united understanding and action. Bringing these together again, or allowing them to touch in different ways, is one of our motivating aspirations.

"Capitalism" occupies a special and privileged place in the language of social representation. References to "capitalist society" are a commonplace of left and even mainstream social description, as are references - to the market, to the global economy, to postindustrial society - in which an unnamed capitalism is implicitly invoked as the defining and unifying moment of a complex economic and social formation. Just as the economic system in eastern Europe used confidently to be described as communist or socialist, so a general confidence in economic classification characterizes representations of an increasingly capitalist world system. But what might be seen as the grounds of this confidence, if we put aside notions of "reality" as the authentic origin of its representations?

Why might it seem problematic to say that the United States is a Christian nation, or a heterosexual one, despite the widespread belief that Christianity and heterosexuality are dominant or majority practices in their respective domains, while at the same time it seems legitimate and indeed "accurate" to say that the US is a capitalist country?1 What is it about the former expressions, and their critical history, that makes them visible as "regulatory fictions,"2 ways of erasing or obscuring difference, while the latter is seen as accurate representation? Why, moreover, have embracing and holistic expressions for social structure like patriarchy fallen into relative disuse among feminist theorists (see Pringle 1995; Barrett and Phillips 1992) while similar conceptions of capitalism as a system or "structure of power" are still prevalent and resilient? These sorts of questions, by virtue of their scarcity and scant claims to legitimacy, have provided us a motive for this book.3

The End of Capitalism (As We Knew It) problematizes "capitalism" as an economic and social descriptor.4

[Insert footnote 4]

Though we refer on almost every page of this book to capitalism, we find ourselves loath to define it, since this would involve choosing among a wide variety of existing definitions (any one of which could be seen as our "target") or specifying out of context a formation that we wish to understand as contextually defined. One familiar Marxist definition, however, involves a vision of capitalism as a system of generalized commodity production structured by (industrial) forces of production and exploitative production relations between capital and labor. Workers, bereft of means of production, sell their labor power for wages and participate in the labor process under capitalist control. Their surplus labor is appropriated by capitalists as surplus value. The capitalist mode of production is animated by the twin imperatives of enterprise competition and capital accumulation which together account for the dynamic tendencies of capitalism to expand and to undergo recurring episodes of crisis.

[End footnote 4]

Scrutinizing what might be seen as throwaway uses of the term - passing references, for example, to the capitalist system or to global capitalism - as well as systematic and deliberate attempts to represent capitalism as a central and organizing feature of modern social experience, the book selectively traces the discursive origins of a widespread understanding: that capitalism is the hegemonic, or even the only, present form of economy and that it will continue to be so in the proximate future. It follows from this prevalent though not ubiquitous view that noncapitalist economic sites, if they exist at all, must inhabit the social margins; and, as a corollary, that deliberate attempts to develop noncapitalist economic practices and institutions must take place in the social interstices, in the realm of experiment, or in a visionary space of revolutionary social replacement.

Representations of capitalism are a potent constituent of the anticapitalist imagination, providing images of what is to be resisted and changed as well as intimations of the strategies, techniques, and possibilities of changing it. For this reason, depictions of "capitalist hegemony" deserve a particularly skeptical reading. For in the vicinity of these representations, the very idea of a noncapitalist economy takes the shape of an unlikelihood or even an impossibility. It becomes difficult to entertain a vision of the prevalence and vitality of noncapitalist economic forms, or of daily or partial replacements of capitalism by noncapitalist economic practices, or of capitalist retreats and reversals. In this sense, "capitalist hegemony" operates not only as a constituent of, but also as a brake upon, the anticapitalist imagination.5 What difference might it make to release that brake and allow an anticapitalist economic imaginary to develop unrestricted?6 If we were to dissolve the image that looms in the economic foreground, what shadowy economic forms might come forward? In these questions we can identify the broad outlines of our project: to discover or create a world of economic difference, and to populate that world with exotic creatures that become, upon inspection, quite local and familiar (not to mention familiar beings that are not what they seem).

The discursive artifact we call "capitalist hegemony" is a complex effect of a wide variety of discursive and nondiscursive conditions.7 In this book we focus on the practices and preoccupations of discourse, tracing some of the different, even incompatible, representations of capitalism that can be collated within this fictive summary representation. These depictions have their origins in the diverse traditions of Marxism, classical and contemporary political economy, academic social science, modern historiography, popular economic and social thought, western philosophy and metaphysics, indeed, in an endless array of texts, traditions and infrastructures of meaning. In the chapters that follow, only a few of these are examined for the ways in which they have sustained a vision of capitalism as the dominant form of economy, or have contributed to the possibility or durability of such a vision. But the point should emerge none the less clearly: the virtually unquestioned dominance of capitalism can be seen as a complex product of a variety of discursive commitments, including but not limited to organicist social conceptions, heroic historical narratives, evolutionary scenarios of social development, and essentialist, phallocentric, or binary patterns of thinking. It is through these discursive figurings and alignments that capitalism is constituted as large, powerful, persistent, active, expansive, progressive, dynamic, transformative; embracing, penetrating, disciplining, colonizing, constraining; systemic, self-reproducing, rational, lawful, self-rectifying; organized and organizing, centered and centering; originating, creative, protean; victorious and ascendant; selfidentical, self-expressive, full, definite, real, positive, and capable of conferring identity and meaning.8

The argument revisited: it is the way capitalism has been "thought" that has made it so difficult for people to imagine its supersession.9 It is therefore the ways in which capitalism is known that we wish to delegitimize and displace. The process is one of unearthing, of bringing to light images and habits of understanding that constitute "hegemonic capitalism" at the intersection of a set of representations. This we see as a first step toward theorizing capitalism without representing dominance as a natural and inevitable feature of its being. At the same time, we hope to foster conditions under which the economy might become less subject to definitional closure. If it were possible to inhabit a heterogeneous and open-ended economic space whose identity was not fixed or singular (the space potentially to be vacated by a capitalism that is necessarily and naturally hegemonic) then a vision of noncapitalist economic practices as existing and widespread might be able to be born; and in the context of such a vision, a new anticapitalist politics might emerge, a noncapitalist politics of class (whatever that may mean) might take root and flourish. A long shot perhaps but one worth pursuing.

#### More than 50% of economic activity is not capitalist – the discourse of capitalist dominance is self-fulfilling.

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A politics of language: diverse economies/community economies

As we argued in chapter 5 of The End of Capitalism, any contemporary economic politics confronts an existing object: an economy produced, through particular modes of representation and calculation, as a bounded sphere "whose internal mechanisms and exchanges separate it from other social processes" (Mitchell 2007). This economy is not simply an ideological concept susceptible to intellectual debunking, but a materialization that participates in organizing the practices and processes that surround it, while at the same time being organized and maintained by them. A project of instituting a different economy must restore this obdurate positivity to its negative grounding. It must, in Laclau's terms (1990), produce a "dislocation," enabling a recognition that "other economies are possible." Something outside the given configuration of being must offer itself as an element or ingredient for a new political project of configuring. For us this dislocating element has been an economic language that cannot be subsumed to existing ways of thinking economy, and instead signals the ever-present possibility of remaking economy in alternative terms. The conceptual resources for different languages of economy are abundantly available. Alongside the hegemonic discourse of economy, many counterdiscourses have arisen from alternative traditions of economic thought (for example, classical political economy, feminist economics, economic anthropology, geography, and sociology) and from workingclass, third-world, and social and community movements (for example, the feminist, socialist, cooperative, and local sustainability movements).4 Yet while there exists a substantial understanding of the extent and nature of economic difference, what does not exist is a way of convening this knowledge to destabilize the received wisdom of capitalist dominance and unleash the creative forces and subjects of economic experimentation. Our intervention has been to propose a language of the diverse econ of social studies of economy since The End of Capitalism wasof social studies of economy since The End of Capitalism was published. published. to perform different economies.5 The language of the diverse economy widens the identity of the economy to include all of those practices excluded or marginalized by the theory and presumption of capitalist hegemony. The objective is not to produce a finished and coherent template that maps the economy "as it really is" and presents (to the converted or suggestible) a ready-made "alternative economy." Rather, our hope is to disarm and dislocate the naturalized dominance of the capitalist economy and make a space for new economic becomings—ones that we will need to work to produce. If we can recognize a diverse economy, we can begin to imagine and create diverse organizations and practices as powerful constituents of an enlivened noncapitalist politics of place. We began constructing our language by surveying a variety of economic traditions and languages and conceptualizing three differentiated practices:6

•different kinds of transaction and ways of negotiating (in)commensurability;

•different types of labor and ways of compensating it; and

•different forms of economic enterprise and ways of producing, appropriating, and distributing surplus.

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Our current representation of what we have called the diverse economy is shown in Figure I.I. In this figure, what is often seen as the economy, that is, formal markets, wage labor, and capitalist enterprise, is merely one set of cells in a complex field of economic relations that sustain livelihoods in regions around the world. Realizing that in both rich and poor countries the bottom two-thirds of the diagram accounts for well over 50 percent of economic activity, we cannot help but be struck by the discursive violence enacted through familiar references to "capitalist" economies and societies.

Considering for a moment just the market-oriented enterprises in the right-hand column of Figure I.I, we recognize in the bottom cell the presence of commodity-producing enterprises of a noncapitalist sort. This should not be surprising—commodities are just goods and services produced for a market; they can be produced in a variety of exploitative or nonexploitative noncapitalist organizations. On the exploitative side, slave modes of producing and appropriating surplus where workers lack freedom of contract are arguably growing—for example, in the United States prison system and in the sex and domestic service industries worldwide (Bales 1999). In addition, feudal surplus appropriation via payments of rent goes on in tenant farming and in many household-based businesses (Kayatekin 2001). But there are also nonexploitative forms of surplus appropriation in the noncapitalist cell: consider the large population of self-employed or independent producers who appropriate and distribute the wealth they produce, and the growing number of collectives and cooperatives that jointly appropriate their surplus and distribute it in ways decided on by the collective membership.

Moving up one cell, we are reminded that difference within the category of capitalist enterprise is as important as the differences between enterprise forms or class processes. Increasingly "alternative" capitalist firms distinguish themselves from their mainstream capitalist counterparts in that part of their production process, their product, or their appropriated surplus is oriented toward environmentally friendly or socially responsible activity. State capitalist enterprises employ wage labor and appropriate surplus but have the potential to produce public goods and distribute surplus funds to public benefit. Nonprofit enterprises similarly employ wage laborers and appropriate their surplus, but by law they are not allowed to retain or distribute profits. Like other capitalist enterprises, these different forms of organization are scattered over the economic landscape. In this representation, no system or unified economy covers the social space and thus necessarily dominates other forms of economy.

Elaborating a vision of the "diverse economy" is one of our strategic moves against the subordination of local subjects to the discourse of (capitalist economic) globalization. Each of our action research projects starts with an inventory by community researchers of local economic practices and organizations that modifies and expands Figure I.I. This process yields a wider field of economic possibility and a revaluation of the local economy in terms of economic resources (as opposed to economic deficiencies) available for projects of economic invention. Representing the diverse economy is a deconstructive process that displaces the binary hierarchies of market/nonmarket and capitalism/noncapitalism, turning singular generalities into multiple particularities, and yielding a radically heterogeneous economic landscape in preparation for the next phase of the projects—the construction of "community economies" in place. In the terms of our language politics, this constructive process entails (1) articulation, or making links among the different activities and enterprises of a diverse economy, and (2) resignification, or convening these activities/enterprises under the signifier of the "community economy." As a practice of development, constructing a community economy is an ethical project of acknowledging relationships and making connections, rather than a technical project of activating generic logics of growth.

Unlike the proliferative fullness of the diverse economy, the community economy is an emptiness—as it has to be, if the project of building it is to be political, experimental, open, and democratic.7 A community economy is an ethical and political space of decision, not a geographic or social commonality, and community is its outcome rather than a ground. The practice of the community economy is a fluid process of continual resignification, discarding any fantasy that there is a perfect community economy that lies outside of negotiation, struggle, uncertainty, ambivalence, and disappointment, discarding the notion that there's a blueprint that tells us what to do and how to "be communal." Indeed, it is a recognition that there's no way not to be communal, not to be implicated with one another, that recalls us to the political task of "building a community economy."

## 2NC

#### Their autonomous conceptualization of organizing is mutually exclusive with self-determination. Their fear of order as inherently logistical leaves them with no mechanism to fight informal domination.

George **SHULMAN** Political Theory @ Gallatin School NYU **’20** “Fred Moten’s Refusals and Consents: The Politics of Fugitivity” *Contemporary Political Theory* p. Published First Online

Moten and Harney instantiate the “what,” or constitutive practices of the undercommons, by juxtaposing “fugitive planning” and “black study” to “politics” and “critique.” Planning and study emerge from sociality as “the blur itself . . . a phenomenon of indistinctness” that confounds self and other (BB, 243). Sociality is not “friendly association with others” as discretely bounded individuals, but “friendly association . . . in the exhaustion of relational individuality”; it is a “radically transformative, self-endangering, selfun- gendering” entanglement that reproduces life by endlessly ramifying difference (BB, 283, 275). But planning and study are practices giving “improvisational” meaning and “informal” order to this flux in ways that engender open-ended process rather than self-enclosing stipulation.

Partly that is because “planners are part of the plan,” and planning is the creation of “the means of social reproduction”—including themselves—“by a common experiment launched from any kitchen, back porch, basement hall, park bench, improvised party. This ongoing experiment with the informal, carried out by and on the means of social reproduction, is what we mean by planning” (UC, 74). Enacting “self-sufficiency at the social level” by practicing indebtedness, planning “reproduces not just what it needs, life, but what it wants, life in difference, in the play of general antagonism” (UC, 76). Planning connotes world-building in tacit and ordinary, not epic or evental, ways, as people improvise relations of “entanglement and virtuosity” in their “virtuous, communal, maternal attention to detail” (BB, 273). Jane Jacobs identified “urban planning” with the state’s patriarchal power, whereas Moten and Harney thus construe fugitive planning as the explicitly maternal self-organizing that she and they identify with the informal order of street and neighborhood life. What Moten later calls “our under-political block party” honors not “our father’s but our mother’s civil rights movement in its radical dispersal, ongoing, decentralized largesse . . . hand-to-hand rituals” and “constant practice of the haptical poetics of entanglement” (BB, 277).26

What they call “politics” posits the deficiency of ordinary people and “whispers of our need for institutions,” for “all politics is correctional” and “all institutions are political” (UC, 20). Planning is invaded by politics as rule or sovereign power, but it is undone from within if “democratic” forms of governance turn subalterns from their “habitual jam” to institutions promising to represent or improve them. For emancipation from minority or tutelage (in Kant’s idiom of critique) or from domination (in Hegelian, democratic, or Fanonian idioms of politics) posit deficiency to promise self-determination in intellectual and political senses. Correction or improvement are enacted “democratically” if subalterns are interpellated into purportedly valid argument, ostensibly mature self-legislation, true representation in political bodies, or properly political speech and action, each reproducing antiblackness in its terms of legitimation. On the one hand, to posit a coherent, articulate, self-possessed (collective) subject, the “brilliant ruse of self-determination” must make life “wrong” in its resistant opacity, unspeakability, wayward aliveness—or blackness (SL, 212). On the other hand, “self-management not from above but from below”—ostensibly democratic governance—is achieved by getting us to ask “what do we not have that we need?” But defining deficiency and addressing the state “privatizes reproduction” and forecloses asking, “what do we already have and do that we must ‘militantly preserve?’” (UC, 55). Moreover, the “distinctness” of a political body or collective subject—posited in the very act of address—is “the all-but-unchecked disaster of generativity’s arrest”—arrest as interdiction, as if to stop motion and time and fix being’s “essential fugitivity” (BB, 26).

The struggle between “those who dwell in policy and fix things and those who dwell in planning and must be fixed,” Moten and Harney argue, is “played out not only in the range of correctional facilities Foucault analyzed— asylums, prisons, hospitals—but also corporations, universities, and NGO’s” (UC, 78). The indistinction and generativity of “earthly and inseparable assembly” precedes and surrounds every institution, setting terms of antagonism and struggle. “The fort really . . . is besieged by what still surrounds it, the common beyond and beneath—before and after—enclosure” (UC, 17). Modern institutions are thus reactive in character—counter-insurgencies to improve what is lacking or correct what is dangerous in the ongoing sociality they occupy—but also appropriate and formalize. “Politics would make us better”—by pathologizing “those who won’t change”—but because “nothing is wrong with us . . . we are the general antagonism to politics looming outside every attempt to politicize us.” Indeed, “we surround democracy’s false image to unsettle it. Every time it tries to enclose us in a decision, we’re undecided. Every time it tries to represent our will, we’re unwilling. We cannot represent ourselves. We can’t be represented” (UC, 19–20).27

These claims about “politics” and “democracy” reflect two kinds of antagonism: one contrasts “those who run things”—elites and their “logistics,” including democratic rule as settler colonialism and white supremacy—and “things that run,” those coerced and conscripted into modernity, said to need fixing, improvement, accreditation. The second antagonism contrasts informal (improvised, local) practices of mutual aid and reflection, and the formalization of power/knowledge instantiated in schools, political parties, democratic states. If the first antagonism echoes Niccolo Machiavelli’s distinction between the few who would dominate and the many who would not be oppressed, the second links refusal to be governed to customary practices of mutual aid and vernacular modes of reflection and expression. In both regards, Moten and Harney depict not only the sociality of those marked black but “the actual existence of . . . non-statist sociality” across time, a claim (inspired by the work of Cedric Robinson) that affiliates European struggles against enclosure from diggers to autonomists, with global struggles against settler colonialism and racial capitalism (SL, 26).

Across Moten’s work, therefore, vitality and freedom are linked only to the informal, which is imagined not as chaos or absence of form but rather as the groundless social ground of tacit sense-making and practical collaboration, so that “informal form” is like Ludwig Wittgenstein’s ordinary or Jane Jacobs’s street life. Depicting a structural antagonism between institutionalized (white) forms and informal (black) sociality, he proposes a generative tension between fugitive energy and form within and by the improvisational informality exemplified in planning, jazz, and grammar. Ordinary collaboration embodies “power to” or kratia, a “capacity to generate generative form,” not as a rule or arche “to which generativity would then submit itself”— “generativity’s arrest”—but as a “proliferative generative form” that enables “common growth in difference” (UM, 137). Sociality thus bears a “jurisgenerative” capacity to create internally differentiating forms of nomos—and without state-enforced rule(s) or stipulated (constitutional) “law” to settle conflicts. Because informality inherently engenders form, any effort to convert planning or study to formalized practices (of politics or critique) inflicts both unalloyed and unnecessary loss. There is harm only in politics, not in forgoing it.28

At the outset of The Undercommons, Moten and Harney thus declare:

Our task is the self-defense of the surround in the face of . . . dispossession through the settler’s armed incursion. While acquisitive violence occasions this self-defense . . . recourse to self-possession in the face of dispossession (recourse, in other words to politics) represents the real danger. Politics is an ongoing attack on the common -the general and generative antagonism- from within the surround. (UC, 17)

Though the undercommons is depicted as immune to interpellation, “the real danger” is less settler violence imposing enclosure and more “self-defense” against dispossession by recourse to politics as a modality of self-possession. Though politics and critique are typically cast as crucial to the self-defense of subaltern life, they are Trojan horses that devalue and disarm it from within. “Critique lets us know that politics (as settler power) is radioactive,” but in fact “politics is the radiation of critique,” and we are harmed by “exposure to the lethal effects of its anti-social energy” (UC, 19).29

In The Undercommons, politics is the “radiation” of critique because critique identifies deficiency to promote “self-possession” in “political” forms of self-determination, but politics and critique are both lethal because their goal is inherently “correctional” and their practices are both parasitic on and appropriative of tacit life. In Moten’s trilogy, politics is also depicted as enforcing the metaphysics of the subject, and thereby antiblackness, and both are enshrined as “sovereignty” is democratized in personal and political terms—as possessive individualism, as political self-determination, as proper membership in a bounded “political body” or state.

This argument enables Moten and Harney to declare that the Black Panthers “theorized revolution without politics”—that is, “with neither a subject nor a principle of decision”—by practicing “ongoing planning” and “contrapuntal study of and in the commonwealth, poverty, and blackness of the surround” (UC, 18). This claim splits wholly “toxic” politics from idealized sociality, as if the Panthers did not organize a party, define authority, exercise organizational power, undertake public engagements with political institutions and white society, and claim popular sovereignty as a collective black subject. Moten and Harney honor Panther agonism toward white institutions when they say “we don’t want to be correct, and we won’t be corrected. Politics proposes to make us better, but we were good already,” yet they do not credit how Panthers, to overcome slavery’s damaging legacy, endorsed a self-correction they folded within profound affirmation of black value (UC, 20). By shifting the revolutionary from politics to sociality, by depicting Panthers engaged only in planning as social reproduction but not in politics, their agonistic refusal to be governed appears only against “politics,” not as a politics or a tension within politics. What shall we make of this?

The Undercommons offers “planning” and “study” as “toys” and “props to play with” (UC, 105), making the text a transitional space in which radical democrats and critical theorists can “study” their own practice of politics and theory. The premise of this play is not so much argued as assumed; every institution in modern liberal civil society enacts a foundational racial antagonism in their norms and material practices. This plausible premise generates a logic whereby self-defense by public engagement or organized power seems not even risky but inherently self-defeating, and any effort to argue against this inference bespeaks both white privilege and cruel optimism. I would credit the premise but render the inferences contestable and situational— politically contingent rather than logically entailed.30

On the one hand, the logic posits a frontier of antagonism, which requires “self-defense” of sociality as a revolutionary treasure. Moten’s “assumption [is] that politics, insofar as it is predicated upon the exclusion and regulation of difference, will have always been the scene of our degradation and never the scene of our redemption, redress, or repair” (BB, 256). The danger in “politics” is not only violent occupation by sovereign rule exercised as exclusion and regulation, nor only “democratizing” rule in the form of achieving subject status by recognition and representation. Politicization is itself also a problem. Partly, claims about justice involve harm and remedy in ways that presume the grammar of the subject and the cruel optimism of recognition that Moten refuses on behalf of black vitality. Mobilizing life as protest also devalues aliveness as if mere life, acquiescent, inarticulate, deficient if not abject—unless translated into explicit, intelligible claim-making. Moten thus asks, “can marginality be de-politicized?”—because its integrity and generativity are jeopardized by interpellation into purportedly political speech and public forms of action.

By saying “insofar as politics is predicated on rule,” however, does he open a space for politics predicated otherwise? After all, fugitive sociality is world-building in ways he also calls public and puts in grammatical proximity to the political: “As life which has been stolen steals away,” so a “kind of impossible publicness emerges through radical exclusion from the political,” and by refusing the status of subject and citizen that has been refused. (SL, xii). How he plays on but refuses the meanings of “political” is demonstrated by an amazing section in Stolen Life, “Air Shaft, Rent Party,” which begins, “I’m here to announce the formation of a new political party” that “is new because it’s not political” (SL, 189–90).

On the one hand, it is characterized by fugitive ambivalence:

Even though the party is, and takes place in, and takes place as a kind of refuge, refuge still indicates that those who take it are refugees and people tend not to want to have to live like that. It’s all messed up, though, because tremendous amounts of love are circulated in refuge so you can’t leave ‘cause your heart is there. But insofar as you’re always dreaming about leaving, which is to say that insofar as you’re always leaving, you can’t stay cause you been somewhere else. Living in two times and places at once, and between loving and leaving the “impossible publicness” of a refuge, this “party” dreams of ending fugitive status while celebrating the ethos it generates.31

On the other hand, therefore:

This new party . . . could be called the house party, but don’t let that mislead you into thinking that house implies ownership: this house party is of and for the dispossessed, the ones who disavow possession, the ones who, in having been possessed of the spirit of dispossession, disrupt themselves. They’re preoccupied with disowning, with unowning. . . . This is the party of the ones who are not self-possessed. . . . So you see what I mean when I say that this new political party is not a political party . . . [but] an extra-political . . . beforeandafterparty.

This before and after, pre- and post-, ante- and anti-, un- and extra-political “party,” in its disowning and unowning ethos, embodies the remainder left as waste by the properly political, the excess beyond its bounds. It is also a “new political party to end all political parties” because it is a “rent party” to sustain a house as refuge, partying to reproduce not only mere life but “the good life in difference.” Partly, that is “feeling each other in the place where we feel—because we bear—each other as differences . . . where the fleshly thing you might have wanted to call a body [is] moving in and with and through each other.” Partly, life in difference “is given in its most essential form” as “that ongoing giving of form we call the informal.” This “emergence of form in and from the informal is the city we’re always making . . . the city of plans . . . of passages . . . of stateless practice” (SL, 189–90).

If publicness is not rule “predicated on the exclusion and regulation of difference,” could it represent another kind of politics? Moten denies this. Still, he calls fugitive sociality “ante-political,” not only “anti-political,” and he sees “the more and less than political experience” of sociality as both “constitutive and disruptive of every political instance.” He even says “this condition that is before and against politics might become something akin to what good people have desired under the rubric of politics.” Indeed, “this terrible beauty [of fugitive sociality] works its wounded kinship to politics” (UM, 79). Kinship because politics is “derivative” of social capacities of assembly and imagination, but wounded because “any political body must exclude and disavow” what he calls “a necessarily social impropriety” (UM, 101). At issue is less “what constitutes political experience, but what antepolitical forces remain in the wake of political reduction and regulation” (UM, 107).

Moments of blur gesture toward a possibility that the fugitivity (or “antepolitical forces”) that Moten protects against “politics” (as reduction and regulation by rule) might be mobilized in or as a radically democratic politics, committed to practice rule or exercise power otherwise. After all, historical instances of grand marronage, or Native American and Zapatista politics now, also draw antistate frontiers to protect the ante-state integrity of self-organization on nonstatist terms, to protect (the blackness of) the margins by not reproducing (the whiteness of) the center. In these examples, grievous losses and grave dangers are lodged in self-possessive (propertied) individualism, organized (alienated) representation, and state-centric (political) institutions. What we might call the creative paranoia of fugitives thus enables turning away and self-defense on behalf of independent and reparative sociality. But Moten’s idealization of sociality appears in his differences from these examples.32

To begin with, though they affirm dispossession ethically, they contest it politically, and not only around land and resources. Native tribes, maroons, or Zapatista activists do not denounce sovereignty as such but instead reanimate inherited ideas to organize self-defense, rework democratic governance, and imagine community as a distinct political body. Likewise, refusing transcendental (liberal or sovereign) forms of “the subject” has not meant refusing any idea of bounded subjects in relation; instead, we see bounded (“relational”) selfhood lived differently when a community’s shared practices acknowledge its Dionysian undoing. Moreover, even if sociality is ontologically given as a “generative antagonism,” and embraced as our groundless ground, it is always-already, inescapably pervaded by antagonisms between those who run things and things that run. Moten repeatedly evokes the maternal to signal that the undercommon is suffused by mutual care and reproductive labors, but he wholly ignores divisions entailed by inequalities of class, gender, or homophobia. Or rather, instead of directly addressing class and gender inequality in the black world, he invokes the reality of a common condition that wealth and status cannot escape, and on that basis makes an ethical turn to reassert the commonality of an inherited maternal ethos that inequalities increasingly jeopardize. An egalitarian “modality” of sociality, therefore, is not ontologically guaranteed or paradoxically sustained by the color line; equality is an achievement that requires organized struggle of some against others, not only against formal white institutions imposing enclosure and precarity from without, but also against “informal forms” of domination or status. In its structural and intramural aspects, inequality generates and demands both inward and outward-facing forms of politics.33

For sure, efforts to engage the state and formally organized power can and do endanger the vitality of the informal practices Moten and Harney call planning, but injustice in the ordinary and the limitations of the local often compel such risks. As the Panthers or BLM activists demonstrate, tacit knowledge and vernacular idioms are recurrently translated into explicit political questions about power and justice, addressed both to and beyond the undercommon. Recurrently, subalterns thus organize representation and power in formalized (not only decentralized) ways and at wider scales, and designate a collective subject through political parties and bodies, even as idioms of “planning” inform how they exercise power and imagine community. Of course Moten knows this history, but his engagement with Arendt suggests why he insists that any effort to politicize (black) sociality is inherently self-defeating.

#### Historiography drives whether research agendas and methods will be Eurocentric and colonial. Our K is prior to evaluating case solvency because evaluating which historical constructs we use for critique drives their effects.

John **HOBSON** Poliitcs & IR @ Sheffield **’19** in *Historiographical Investigations in International Relations* Eds. Brian Schmidt & Nicolas Guilhot p. 150

Within both IR and IPE, often bubbling beneath the surface, is a shared ambivalence considering historiography’s worth and intellectual importance. Some have broken the surface and spoken out against this intellectual project, no doubt speaking for many others who have not entered the discussion (though hopefully not the “silent majority”). The general thrust of the dissenters is that IR and IPE historiography is an irrelevant indulgence that tells us nothing important and that at worst it is a diversion from the “real” task that confronts us all—that of explaining, understanding, and hopefully improving the world. What, then, is at stake in doing (critical) historiography in IR and IPE? The short answer is everything—their disciplinary borders, identities, teaching, and research agendas. This is the theme that I shall pursue in this chapter. The reason for this challenge derives from my central claim that in the absence of critical historiography these disciplines will continue to produce regressive Eurocentric work that serves merely to shore up the primacy of the West in world politics, thereby maintaining the long-dominant Eurocentric narratives of world politics as opposed to ones that engage a truly global perspective that is genuinely democratic in intellectual intent. Accordingly, dismissing this critical historiographical venture as but an irrelevant indulgence becomes part of the problem rather than the solution.

## 1NR

### def – usfg

#### The affirmative is not topical. “United States federal government” means the three branches of the central government – the affirmative does not advocate action by the USFG.

Organisation OECD for Economic Co-operation and Development Council ’87 “United States,” *The Control and Management of Government Expenditure*, p. 179]

1. Political and organisational structure of government

The United States of America is a federal republic consisting of 50 states. States have their own constitutions and within each State there are at least two additional levels of government, generally designated as counties and cities, towns or villages. The relationships between different levels of government are complex and varied (see Section B for more information).

The Federal Government is composed of **three branches**: the legislative branch, the executive branch, and the judicial branch. Budgetary decisionmaking is shared primarily by the legislative and executive branches. The general structure of these two branches relative to budget formulation and execution is as follows.

### def – expand core AT laws

#### The Sherman, Clayton, and FTC act are the core antitrust laws.

Gibbs ‘ND [Gibbs Law Group; “The Sherman Antitrust Act”; https://www.classlawgroup.com/antitrust/federal-laws/sherman-act/; AS]

The Sherman Antitrust Act is one of three core federal antitrust laws, along with the Clayton Antitrust Act and the Federal Trade Commission Act.

#### “Expand” means “make bigger” – their interp assumes there is *not an object* but the object of expansion is the scope of core AT laws!

New Oxford American Dictionary no date. “Expand”. Stored locally on Apple Mac dictionary; card is full text.

ex·pand | ikˈspand |

verb

become or make larger or more extensive: [no object] : their business expanded into other hotels and properties | [with object] : baby birds cannot expand and contract their lungs.

• [no object] Physics (of the universe) undergo a continuous change whereby, according to theory based on observed redshifts, all the galaxies recede from one another.

• [no object] (expand on) give a fuller version or account of: Anne expanded on the theory.

### tva – power not efficiency/radical economics

#### Antitrust can be retooled to prioritize power over efficiency and allocate economic coordination rights.

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.

### tva – seed monopolies

#### A card they cite 4 TIMES IN THE 1AC is an advocate for using policy to break up seed monopolies

McClusky 20 – (Cathileen Mccluskey and Kristina Kiki Hubbard, McCluskey is the outreach director for Organic Seed Alliance, an organization that advances seed systems that are democratic and just, and support human and environmental health, Hubbard is the director of advocacy and communications for Organic Seed Alliance, "How Patents Threaten Small Seed Companies," Civil Eats, Published September 11th, 2020, <https://civileats.com/2020/09/11/op-ed-how-seed-patents-threaten-small-seed-companies)//gcd> recut //ryn

Restricting people from continuing our co-evolution with plants for food security is an attack on current and future generations. We have seen, in the last 100 years, a complete shift in the management of seed as a public resource to one that is largely privatized. Organic Seed Alliance and others have raised the alarm throughout the last decade about the consequences of utility patents on seed.

“The many small seed companies, breeders, seed keepers, and gardeners nurturing seed resiliency  must be protected from the legal flex of the companies capitalizing off of our natural resources.”

[The erosion of public plant breeding](https://acsess.onlinelibrary.wiley.com/doi/full/10.1002/csc2.20227) programs has been the canary in the coalmine. And utility patents on the kinds of broad plant traits included in the BASF letter point toward the potential privatization of all seed. And if that happens, it’s not just organic seed breeders and farmers who would be impacted. The concentrated ownership of seed affects all growers and eaters.

There are still many small seed companies, breeders, seed keepers, and gardeners throughout the U.S. creating an alternative. They are nurturing resiliency and must be protected from the intimidation tactics and legal flex of chemical giants capitalizing off our natural resources.

Organic Seed Alliance has launched [the Seed Patent Watch project](https://seedalliance.org/seed-patent-watch/) in order to help craft policies that allow seed stewards to protect themselves, and take actions against utility patents.

It’s not too late to fight the privatization of this important living natural resource. Now is the time to stand up for our collective right to save, breed, and plant seeds—and to feed ourselves independent of multinational companies like Bayer and BASF.

#### Here’s an advocate

Bloomberg 13, 1-21-2013, "Monsanto's seed patents may trump antitrust claims," No Publication, https://www.business-standard.com/article/companies/monsanto-s-seed-patents-may-trump-antitrust-claims-110031400042\_1.html

Monsanto Co, facing antitrust probes into its genetically modified seeds, may benefit from previous court rulings in which intellectual property rights trumped competition concerns, antitrust lawyers say. The Department of Justice and seven state attorneys general are investigating whether the world's largest seed company is using gene licenses to keep competing technologies off the market. At issue is how the St Louis-based company sells and licenses its patented trait that allows farmers to kill weeds with Roundup herbicide while leaving crops unharmed. The company's Roundup Ready gene was in 93 per cent of US soybeans last year. "Justice is clearly trying every way it can to see whether Monsanto is exceeding its rights under the patent," said James Weiss, a Washington-based attorney at K&L Gates LLP who helped defend Microsoft Corp against a federal antitrust probe. "At the end of the day, they may not be able to do much with it because of the scope of those patents. In almost all the cases, the courts come out on the side of intellectual property."

Yet Monsanto's seeds are so ubiquitous they have become like AT&T's telephone lines before the company's 1984 breakup or Microsoft Corp's Windows operating system in the 1990s, said James P Denvir, an attorney who represents rival seedmaker DuPont Co and led the government's AT&T case. "Both cases involve what I think of as a classic platform monopoly," Denvir said. "It's a facility that competitors need access to, to compete against the monopolist." Monsanto and DuPont, which are suing each other over a biotech seed license, both hired former Justice Department lawyers who have handled high-profile cases. 'Revolutionising the marketplace' Monsanto's attorney, Dan Webb, defended Microsoft in 2002 against the government antitrust claims. A former US Attorney in Chicago, he also prosecuted Admiral John Poindexter in the Iran- Contra affair. Webb credits Monsanto with "revolutionising the agriculture marketplace" and said antitrust claims such as those in DuPont's suit aren't an uncommon response to patent infringement cases such as Monsanto's. "The perception among farmers is that DuPont's complaints about exclusivity are without merit," said Webb, a Chicago-based Winston & Strawn LLP partner. Denvir, who represents DuPont, said farmers are among the victims. "Clearly, we are too," he said. "The bigger harm, the more important harm, is to farmers in denying them the best seeds they can get at the lowest possible prices." Legal monopoly While patents provide some protection from antitrust claims, giving a company a legal monopoly for a specified time, patent rights can be abused, DuPont lawyers and others said. "The question becomes whether or not somebody in that position has engaged in some bad acts that either got it in that position or are designed to maintain that position or to extend that position to other markets," said Charles "Rick" Rule, a lawyer at Cadwalader Wickersham & Taft LLP who ran the Justice Department's antitrust unit under President Ronald Reagan. Christine Varney, who heads the antitrust division in President Barack Obama's administration, has signaled she'll be more aggressive than the Bush administration, Rule said. Varney today said the Justice Department is investigating whether biotech-seed patents are being abused to extend or maintain companies' dominance in the industry. She is in Ankeny, Iowa, for a workshop on agriculture-market competition that was organized by the Justice Department and the Department of Agriculture. 'Robust patent system' "There is a very robust patent system in this country and if you are abusing a patent to extend or maintain a monopoly, that is not legal," Varney said. "We are looking at those very important issues." The department probably is reviewing whether Monsanto's licensing restrictions on seeds have a legitimate business justification, said Rule, who occasionally advises Monsanto and isn't working with Webb on the antitrust case. "When you have that sort of monopoly power, it can lead to abuse, which is what we've been experiencing over the past several years," said Thomas L Sager, DuPont's general counsel. Wilmington, Delaware-based DuPont claims Monsanto protects its lead in biotech seeds, including the Roundup Ready seeds sold since 1996, by controlling whether competitors can add their own genetics.