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## 1AC – Labor

### 1AC – Plan

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

### 1AC – Labor

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

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

VERTICAL RESTRAINTS AND THE FISSURED WORKPLACE

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

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

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

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

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

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

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

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

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

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

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

A. Franchising

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

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

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

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

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

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

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

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

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

TOWARD A RE-ALLOCATION OF COORDINATION RIGHTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. From Efficiency to Power

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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2. FROM MARKET FAILURE TO MARKET SHAPING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Preliminary Clarification of Terms

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

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

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

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

Varieties of Liberalism

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

Kantian vs. Lockean

Contractarian vs. Utilitarian

Corporate vs. Democratic

Social vs. Individualist

Comprehensive vs. Political

Ideal-theory vs. Non-ideal-theory

Patriarchal vs. Feminist

Imperial vs. Anti-imperial

Racial vs. Anti-racial

Color-blind vs. Color-conscious

Etc.2

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

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

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

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

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

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

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

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

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

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

1. Liberalism Has an Asocial, Atomic Individualist Ontology

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Liberal Humanist Individualism Is Naïve about the Subject

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Reconfiguring the topography of the common

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

# 2AC

## Case

### 2AC – AT: Fungibility

**There is no grammatical separation between blackness and labor.**

Michael **DAWSON** Poli Sci @ Chicago **’16** “Hidden in Plain Sigh: A Note on Legitimation Crises and the Racial Order” *Critical Historical Studies* Spring p. 157-161

Unlike Wilderson, we must recognize that only by understanding simultaneously the intersections of the logics of capitalism and white supremacy can we hope to forge an analytical framework that might provide a guide for understanding and combating the multiple logics that have devastated black and other communities still categorized and treated as less than fully human—that is, who have rights less than those of full citizens. I am in broad agreement with Wilderson when he claims, “the emergence of the slave, the subject-effect of an ensemble of the direct relations of force, marks the emergence of capitalism itself. Let us put a finer point on it: violence toward the black body is the precondition for the existence of Gramsci’s single entity ‘the modern bourgeois-state’ with its divided apparatus, political society and civil society. This is to say violence against black people is ontological and gratuitous as opposed to merely ideological and contingent. Furthermore, no magical moment (i.e. 1865) transformed paradigmatically the black body’s relation to this entity.”31 Wilderson’s last point, however, is very ahistorical. While the gratuitous elements remained across eras, both the political economy and blacks’ relationship to it changed in fundamental ways. Even more ahistorical is the claim “We are off the record.”32 Being on the “record” is the essence, as Baptist and Johnson show in their historical research on slavery, of what Wilderson gets wrong.33 Blacks in the United States have always been part of the record—look at any slave owner’s record book, or the records of a Detroit autofactory in 1968, or the records of any prison today. We have been both on the record while simultaneously having a record—as sociologist Debra Pager puts it— we have always been “marked.” It is not that the “black American subject does not generate historical categories of Entitlement, Sovereignty, and/or Immigration.”34 What we need to understand and counter is how those categories morph, collide, and in some cases collapse when viewed through the historical prism of black exploitation.

On a very deep yet pragmatic level it is ludicrous of Wilderson to assert that “work is a white category. The fact that millions upon millions of black people work misses the point. The point is we were never meant to be workers; in other words, capital/white supremacy’s dream did not envision us as being incorporated incorporative. From the very beginning we were meant to be accumulated and die. . . . Today, at the end of the twentieth century, we are still not meant to be workers. We are meant to be warehoused and die.”35 This is fundamentally wrong: we were brought here to work, and to die. The two phenomena were and remain interconnected—and connect blacks in the United States to the other populations that were meant to work and/or die whether in the plantations of sub-Saharan Africa or the mines of the Andes.

Times change, including American blacks’ relationship to labor markets and the state. Our task is to understand those changes in order to create a society free from exploitation, oppression, and racial murder. Wilderson gets it wrong when he argues “again, the chief constant to the dream is that, whereas desire for black labour power is often a historical component to the institutionality [sic] of white supremacy, it is not a constituent element.” Yes, black labor was a “constituent element of white supremacy”—certainly at least from slavery through late Jim Crow. It is arguable to what extent it remains so in the United States, given the changing relationship between race and capitalism and specifically between blacks and the US labor market. Working-class blacks within the United States constitute one of the populations around the globe that have increasingly found their labor and bodies disposable. All of these “disposable” populations have been on the “wrong” side of the superior/inferior binary that is the hallmark of the abode of racial expropriation. As my coauthor Megan Francis and I argue, this relationship is not static and changes as the configuration of the relationship between the economy, the state, and civil society evolves in tandem with capitalist society itself.36 Today’s crisis is based in part on the partial victories of the mid-twentieth century against Jim Crow and superexploitation within the United States and against colonialism in the global South. As the ability to superexploit nonwhite populations in the metropole (such as in the United States) became more difficult and the ability to directly rip off the former colonies also became more difficult, populations somewhat protected from the worst ravages of capitalism, such as unionized labor and the white American middle class, saw many of their hard-won gains disappear as neoliberal regimes gained power, from the United States and the United Kingdom to the European Union and eventually the entire world. As these populations saw their benefits and privileges (as well as their incomes and wealth) pressured by an ever more rapacious capitalism, resentment increased against primarily nonwhite communities—particularly black and immigrant communities. The result has been an ever more toxic racial/ethnic/religious landscape in the United State, but also throughout the global North.

Frank Wilderson III asks, “What does it mean to be free?” and answers by then asking “What does it mean to suffer?”37 Yet, what he misses in his psychological analysis of “white fantasies and shared pleasures” that lead to violence aimed at blacks is the history of the changes in the political economy that has led to a new “twoness,” one different from that of Du Bois: a black subjectivity that combines the potential disposability of the slave with exploitation of the black worker. It is not a case of either/or. Black freedom—from both exploitation and gratuitous violence—can only be gained by confronting the matrices of both capital and white supremacy. Indeed, this has been the case since what Beckert has called the fifteenth- and sixteenth-century era of war (mercantile)- capitalism. The “twoness” of the combined black (disposable) slave/worker has in its synthesis a political demand: for self-determination**.** The combined status of slave and worker still provides an extremely antagonistic site for blacks in the United States, due to continued arbitrary violence from the state and white civil society, as well as continued racialized economic subordination and exploitation. Consequently, it is still the case that the black demand for the freedom to choose their path from domination, exploitation and arbitrary violence remains justified in this post–civil rights era.

The power of racialized logics within the United States has always made this an even more difficult task than it would be in a society that did not divide its population into superior and inferior humans. Fraser correctly argues that central to this task is creating counterhegemonic narratives. But she also correctly states, “what grounds hegemonic worldviews—and their counterhegemonic rivals—are suppositions about the subject positions and capacities for agency available to social actors, the proper responsibilities and actual capabilities of public powers, the structure and operation of the reigning social order, the principles and frames of justice by which that order is to be evaluated, and the historical availability of desirable and feasible alternatives. It is the set of entrenched assumptions about such matters, as embedded in common sense, that shapes the responses of social actors to ‘system disturbances.’”38 As I have demonstrated in some depth elsewhere, the racialization of American politics has meant that there are vast racial differences, particularly between blacks and whites in what is understood as political and sociological “common sense.”39 In times of heightened racial conflict and polarization, blacks and whites do not even see the same world, recognize the same “facts.”40 The contradictions within the capitalist and racial orders suggest we may live in a time of conjuncture. As Althusser suggests, “The conjuncture is thus no mere summary of its elements, or enumeration of diverse circumstances, but their contradictory system, which poses the political problem and indicates it historical solution.” 41 The problem now is determining the “historical solution.” The contradictions that underlie the current crisis have their own specific aspects. But due to the fact that progressive and black movements remain relatively weak, it is also possible that reactionary movements could decisively win in these times. This is the context within which movements such as Black Lives Matter organize and fight. Given the evolution of racialized capitalism, they, and we, have no choice but to simultaneously fight white supremacy and economic injustice. We must insist on the full human rights for Sandra Bland and her fellow victims of a racist and murderous state as well as terrorists such as Dylan Roof. We must fight new modes of state expropriation that seek to recover revenue for capitalists and the state by violating the most basic of human rights such as the shutting off of water to poor families in Detroit; the use of the police in communities such as Ferguson to extract unconstitutional revenues from black “citizens”; or the state-enabled use of tax liens in cities such as Chicago to enable entrepreneurial thieves to legally steal black homes and property. In the United States part of the power of white supremacy is that we often overlook the importance of analyzing its logics when we fight for justice, even though the abode of race is hidden in plain sight.

## K

### 2AC – AT: K

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

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

III

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

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

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

#### Centering power over efficiency treats the law as a political tool instead of a neutral arbiter. All of their link cards assume naïve belief in the rule of law as a intrinsic good. Our law and political economy framework takes the law as a tool in political fights, not a formal and neutral source of precedent. That’s Purdy.

#### Perm do both – the 3E Process Seed Bank should be coupled with reforms that democratize the normative economy. The perm resolves link arguments about financial relationships of extraction.

Todoroff ’18 [Uriah Marc; Montreal-based writer specializing in art, philosophy, and communism; 5/14/18; “A Cryptoeconomy of Affect”; <https://thenewinquiry.com/a-cryptoeconomy-of-affect/>; The New Inquiry; TV]

We see the 3E as a kind of intensifier of modes of thinking and living dedicated to inventing ways that we can continue to learn together, regardless of our age, background, or learning style. We don’t see it as an opposite to the university; we see it as a parasite. You could put the emphasis on the site: a para-site, a para-institution that maintains relations with the institution of the university but operates by a different logic.

It would be very naive of us to think you could just walk out of capitalism. We’re not that naive. Neoliberalism is our natural environment. We therefore operate with what we call strategic duplicity. This involves recognizing what works in the systems we work against. Which means: We don’t just oppose them head on. We work with them, strategically, while nurturing an alien logic that moves in very different directions. One of the things we know that the university does well is that it attracts really interesting people. The university can facilitate meetings that can change lives. But systemically, it fails. And the systemic failure is getting more and more acute. And so what we imagine is that the Institute, assisted by the 3E Process Seed Bank, will create a new space that might overlap with some of the things the university does well, without being a part of it (or being subsumed by its logic).

MASSUMI.— Going back to the question of value, we want to create an economy around the platform that does not follow any of the usual economic principles. There will be no individual ownership or shares. There will be no units of account, no currency or tokens used internally. The model of activity will not be transactional. Individual interest will not be used as an incentivizer. What there will be is a complex space of relation for people to create intensities of experience together, in emergent excess over what they could have created working separately, or in traditional teams. It’s meant to be self-organizing, with no separate administrative structure or hierarchy, and even no formal decision-making rules. It’s anarchistic in that sense, but through mobilizing a surplus of organizing potential, rather than lacking organization. You could also call it communistic, in the sense that there is no individual value holding. Everything is common.

MANNING.— Undercommon.

MASSUMI.— Yes, undercommonly. The undercommons is Fred Moten and Stefano Harney’s word for emergent collectivity, which is one of our inspirations. We want to foster emergence and process, but at the same time find ways of making it sustainable. That means that the strategic duplicity has to extend to the economy as we currently know it. We have to be parasitical to the capitalist economy, while operating according to a logic that is totally alien to it.

What we’re thinking of is making the collaborative process moving through the platform function according to the radically anti-capitalist principles we were just talking about, centering on the collective production of surplus values of life, and separating that from the dominant economy by a membrane. A membrane creates a separation, but at the same time allows for movements across. It has a certain porosity. The idea is that we would find ways, associated with the affect-o-meter we were describing earlier, to register qualitative shifts in the creative process as it moves over its formative thresholds, and moves back and forth between online operations and offline events. What would be registered is the affective intensity of the production of surplus value of life, its ebbs and flows. The membrane would consist in a translation of those qualitative flows into a numerical expression, which would feed into a cryptocurrency. Basically, we’d be mining crypto with collaborative creative energies—monetizing emergent collectivity. The currency would be “backed” by the confidence we could build in our ability to keep the creative process going and spin it off into other projects, as evidenced by the activities of the Three Ecologies Institute as an experiment in alter-education.

On the side of the membrane facing the monetary economy, we would be producing a recognizable, quantifiable movement of value. But the membrane would shelter the creative process going on inside the platform from being colonized by that logic. We’d try to have the best of both worlds. It would be essential that the currency not be just a speculative vehicle that joins the crowd of coins. Our economic space would have to inhabit an ecology of other economic spaces experimenting with adapting blockchain and post-blockchain autonomous organization to cooperative endeavors. The key, once again, is finding workable solutions to the problem of how to use qualitative analysis to register movements of creative intensity—how to coax numbers into an alliance with qualities of experience. There is a new concept being developed by Nora Bateson that she calls “warm data” that has a similar goal, in relation to basic science, that we’d like to hook into.

#### Black feminist thought is compatible with discussion of institutions — the law is a crucial avenue for interrupting the subordination of black women

Hill Collins, PhD, 8 (Patricia, Distinguished University Professor of Sociology @University of Maryland, College Park, *Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment*, Routledge, Pgs. 277-280)

The structural domain of power encompasses how social institutions are organized to reproduce Black women’s subordination over time. One characteristic feature of this domain is its emphasis on large-scale, interlocking social institutions. An impressive array of U.S. social institutions lies at the heart of the structural domain of power. Historically, in the United States, the policies and procedures of the U.S. legal system, labor markets, schools, the housing industry, banking, insurance, the news media, and other social institutions as interdependent entities have worked to disadvantage African-American women. For example, Black women’s long-standing exclusion from the best jobs, schools, health care, and housing illustrates the broad array of social policies designed to exclude Black women from full citizenship rights. These interlocking social institutions have relied on multiple forms of segregation—by race, class, and gender—to produce these unjust results. For AfricanAmerican women, racial segregation has been paramount. Racial segregation rested on the “separate but equal” doctrine established under the 1896 ruling of Plessy v. Ferguson where the Supreme Court upheld the constitutionality of segregation of groups. This ruling paved the way for a rhetoric of color-blindness (Crenshaw 1997). Under the “separate but equal” doctrine, Blacks and Whites as groups could be segregated as long as the law was color-blind in affording each group equal treatment. Despite the supposed formal equality promised by “separate but equal,” subsequent treatment certainly was separate, but it was anything but equal. As a result, policies and procedures with housing, education, industry, government, the media, and other major social institutions have worked together to exclude Black women from exercising full citizenship rights. Whether this social exclusion has taken the form of relegating Black women to inner-city neighborhoods poorly served by social services, to poorly funded and racially segregated public schools, or to a narrow cluster of jobs in the labor market, the intent was to exclude. Within the structural domain of power, **empowerment cannot accrue to individuals and groups without transforming U.S. social institutions that foster this exclusion**. Because this domain is large-scale, systemwide, and has operated over a long period of time via interconnected social institutions, segregation of this magnitude cannot be changed overnight. Structural forms of injustice that permeate the entire society yield only grudgingly to change. Since they do so in part when confronted with wide-scale social movements, wars, and revolutions that threaten the social order overall, African-American women’s rights have not been gained solely by gradual reformism. A civil war preceded the abolition of slavery when all efforts to negotiate a settlement failed. Southern states routinely ignored the citizenship rights of Blacks, and even when confronted with the 1954 Brown v. Board of Education Supreme Court decision that outlawed racial segregation, many dug in their heels and refused to uphold the law. Massive demonstrations, media exposure, and federal troops all were deployed to implement this fundamental policy change. The reemergence of White supremacist organizations in the 1990s, many of which recirculate troubling racist ideologies of prior eras, speaks to the deep-seated resentment attached to Black women, among others, working toward a more just U.S. society. Events such as these indicate how deeply woven into the very fabric of American society ideas about Black women’s subordination appear to be. In the United States, visible social protest of this magnitude, while often required to bring about change, remains more the exception than the rule. For U.S. Black women, social change has more often been gradual and reformist, punctuated by episodes of systemwide upheaval. Trying to change the policies and procedures themselves, typically through social reforms, constitutes an important cluster of strategies within the structural domain. Because the U.S. context contains a commitment to reformist change by changing the laws, Black women have used the legal system in their struggles for structural transformation. African-American women have aimed to challenge the laws that legitimate racial segregation. As Chapter 9’s discussion of Black women’s activism suggests, African-American women have used various strategies to get laws changed. Grassroots organizations**,** forming national advocacy organizations**,** and event-specific social protestsuch as boycottsand sit-inshave all been used**,** yet changing the laws and the terms of their implementation have formed the focus of change. Even the development of parallel social institutions such as Black churches and schools have aimed to prepare African-Americans for full participation in U.S. society when the laws were changed. African-American women have experienced considerable success not only in getting laws changed, but in stimulating government action to redress past wrongs. The Voting Rights Act of 1964, the Civil Rights Act of 1965, and other important federal, state, and local legislation have outlawed discrimination by race, sex, national origin, age, or disability status. This changed legal climate granted African-American women some protection from the widespread discrimination that we faced in the past. At the same time, class-action lawsuits against discriminatory housing, educational, and employment policies have resulted in tangible benefits for many Black women. While necessary, these legal victories may not be enough. Ironically, the same laws designed to protect African-American women from social exclusion have increasingly become used against Black women. In describing new models for equal treatment under the law, Black feminist legal scholar Kimberle Crenshaw argues that the rhetoric of color-blindness was not unseated by the 1954 Brown v. Board of Education ruling. Instead, the rhetoric of color-blindness was reformulated to refer to the equal treatment of individuals by not discriminating among them. Under this new rhetoric of color-blindness, equality meant treating all individuals the same, regardless of differences they brought with them due to the effects of past discrimination or even discrimination in other venues. “Having determined, then, that everyone was equal in the sense that everyone had a skin color,” observes Crenshaw, “symmetrical treatment was satisfied by a general rule that nobody’s skin color should be taken into account in governmental decision-making” (Crenshaw 1997, 284). Within this logic, the path to equality lies in ignoring race, gender, and other markers of historical discrimination that might account for any differences that individuals bring to schools and the workplace. As a new rule that maintains long-standing hierarchies of race, class, and gender while appearing to provide equal treatment, this rhetoric of color-blindness has had some noteworthy effects. For one, observes Black feminist legal scholar Patricia Williams (1995), it fosters a certain kind of race thinking among Whites: Because the legal system has now formally equalized individual access to housing, schooling, and jobs, any unequal group results, such as those that characterize gaps between Blacks and Whites, must somehow lie within the individuals themselves or their culture. When joined to its twin of gender neutrality, one claiming that no significant differences distinguish men from women, the rhetoric of color-blindness works to unseat one important strategy of Black women’s resistance within the structural domain. Black women who make claims of discrimination and who demand that policies and procedures may not be as fair as they seem can more easily be dismissed as complainers who want special, unearned favors. Moreover, within a rhetoric of color-blindness that defends the theme of no inherent differences among races, or of gender-neutrality that claims no differences among genders, it becomes difficult to talk of racial and gender differences that stem from discriminatory treatment. The assumption is that the U.S. matrix of domination now provides equal treatment because where it once overtly discriminated by race and gender, it now seemingly ignores them. Beliefs such as these thus allow Whites and men to support a host of punitive policies that reinscribe social heirarchies of race and gender. In her discussion of how racism now relies on encoded language Angela Davis identifies how this rhetoric of color-blindness can operate as a form of “camouflaged racism”: Because race is ostracized from some of the most impassioned political debates of this period, their racialized character becomes increasingly difficult to identify, especially by those who are unable—or do not want— to decipher the encoded language. This means that hidden racist arguments can be mobilized readily across racial boundaries and political alignments. Political positions once easily defined as conservative, liberal, and sometimes even radical therefore have a tendency to lose their dis tinctiveness in the face of the seductions of this camouflaged racism (Davis 1997, 264). Americans can talk of “street crime” and “welfare mothers,” all the while claiming that they are not discussing race at all. Despite the new challenges raised by the rhetoric of color-blindness and gender neutrality, it is important to remember that **legal strategies have yielded and most probably will continue to produce victories for African-American women.** Historically, much of Black women’s resistance to the policies and procedures of the structural domain of power occurred outside powerful social institutions. Currently, however, African-American women are more often included in these same social institutions that long excluded us. Increasing numbers of African-American women have gained access to higher education, now hold good jobs, and might be considered middle-class if not elite. These women often occupy positions of authority inside schools, corporations, and government agencies. Achieving these results required changing U.S. laws.

#### The alternative is incompatible with the analytic of racial capitalism. Bridging anti-racist and anti-capitalist politics is the only way to cope with capitalism as a mechanism of racial subordination.

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The main problem of this approach is that it discounts contemporaneous modes of economic expansion, particularly slavery and the slave trade. 2 It also supports a wider tendency in Marxist thought to think of slavery as an antecedent to capitalism-a historical stage -thereby glossing over the startling fact, affirmed in much recent historiography, that the chattel slave was a new kind of laboring being and a new species of property born with capitalism. 3 As Sven Beckert writes, slavery, especially on North America's "cotton frontier," was not only a labor regime but also a means of allocating capital that was "tightly linked to the intensity and profits of industrial capitalism" that largely dispensed with the direct coercion of producers (i.e., laborers).4 Marx's oeuvre, which often compares the labor of workers with that of slaves during this time, exemplifies the problem, on the one hand affirming what W. E. B. Du Bois once called the "slavery character" of capitalism in its Anglo-American ascendancy, yet on the other contributing to a problematic relegation of African slavery to a secondary role in capitalism's development that has haunted radical politics ever since.

An effect of this relegation has been the separation of race, sex, and gender domination from capitalist exploitation, conceptually and in the determination of strategic priorities for working-class unification and struggle. Ironically, this way of constituting anticapitalist struggle not only impedes the kind of solidarity required in a world characterized by "intimate and plural relationships to capital" (in the words of Dipesh Chakrabarty), 5 but it also forfeits a powerful analytic, discernible within Marx's oeuvre, that conceives capitalism as a machine whose productive expansion depends on increasing degrees of appropriation and dispossession. 6 Marx not only describes capitalism as "veiled slavery" but also takes "slave management in slave-trade countries" as a reference point for thinking about capitalism's seizure of vital life processes, including what he calls the wage worker's "premature exhaustion and death. " 7 As subsequent anti-Marxist critics have argued, slavery in this register is paradoxically indispensable for thinking about capitalism and as such "unthinkable." Sometimes slavery seems "closer to capitalism's primal desire ... than wage [labor]," while at other times it seems to have been superseded by an order of oppression whose power rests on a supposed ability to dispense with violent dominion. 8 Strictly distinguishing between the worker's exploitation and the slave's "social death" -a common move in an important strand of contemporary black critical theorizing known as Afro-pessimism-offers no better answers to this conundrum but merely a kind of inversion in which slavery and the antiblackness that proceeds from it are the excluded ground of politics as such. This approach further alienates an understanding of slavery tied to the development of capitalism, and with it any impulse to overcome the problematic severing of racial domination and class subordination. To bridge this analytical and political divide, we might instead examine how the production of racial stigma that arises in support of chattel slavery has helped to foster the material, ideological, and affective infrastructures of appropriation and dispossession that have been indispensable to the rise of capitalism over a much longer period.

A key origin of race concepts was the differential ethical and material valuation of human subjects in slavery. Slave status was explicitly linked to race, gender, and sex within the planation household, upheld by private violence, and formally backed by state power. Wage labor (and even indentured servitude), by contrast, was increasingly nationalized and linked to a realm of public, social standing and limited state protection. As Jennifer Morgan and other historians have argued, the main legal innovation of chattel slavery in seventeenth-century North America was the assignment of hereditary force, by which captive Africans could only ever give birth to future slaves.9 The unpaid labor of slaves (like that of all workers) rested on another crucial layer of unpaid work: social and biological reproduction conducted by women. The process of conception and reproduction under slavery, however, was violently coerced and attached to the creation of a new species of human capital, "sustained," in the words of Frederick Douglass, "by the auctioneer's block."10 This biocapitalist innovation was in turn married to the slaveholder's power over life and death, expanding the ambit and varieties of corporeal violence that could be visited upon the bodies of slaves, up to and including homicide.11

[INSERT FOOTNOTE 11]

11. What Wilderson has termed "gratuitous violence" retained an instrumental value as exem plary violence, a deterrent to much-feared resistance and revolt. More recently, Edward Baptist has made a compelling case for the relationship between bodily torture and surplus extraction under slavery. Edward Baptist, The Half that Has Never Been Told: Slavery and the Making of American Capitalism (New York: Basic Books, 2015).

[END FOOTNOTE 11]

The rise of the commodity form, as Marx tells us, advanced broader ideas about universal exchangeability, formal equality, and general abstraction from the particular properties of persons and things. The legal and government procedures and material processes that produced these effects, however, operated in a world of human beings who were themselves commodities (as well as instruments of credit and capital investment), and on the basis of communally articulated differences and divisions that were in turn recast under forms of abstract thinking, most notably racial science, whose lineage contaminated the development of the human sciences more generally. In this view, racial subordination might be thought of as something that materialized with the production and governance of normative class differentiation. It represents a kind of superordinate class inequality that has been structured into (certain variants of) capitalist social formation through an association of whiteness with property, citizenship, wages, and credit, along with the renewal of surplus or superexploited subjectivities and collectivities at the openly coercive, lawless, and law-defining edge of capitalist accumulation by dispossession.12

#### Gratuitous violence does not separate slave and worker – spectacular violence has been a key anti-labor tool. Recognizing linkages instead of trying to trace a root cause is key to transform conditions of work.

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Civil society, as both Foucault and Marx argue in different ways, is the perfect site for capitalism, as a realm of economic freedom that fundamentally modifies the terms of political authority. While Marx attempted to demystify this process by describing the actual subordination of sovereign political status to forceful economic tyranny, Foucault at times emphasizes the real limitations placed by market freedom on the political life of the state. “The condition of governing well,” he writes, “is that freedom, or certain forms of freedom are really respected.”54 The idea of a totalizing police power gives way to a police force focused upon the prevention and management of the probability of “disorders” and “disasters.” At the same time, both Marx and even Foucault exception- alize the phenomenon that at different points preoccupies both of them: the bloody, annihilating violence that haunts modern social existence. In an echo of Marx’s account of the decreasing frequency in use of overt force, Foucault, for example, calls Nazi genocide an “eruption of racism,” an expression of the outdated right of a sovereign to kill that is retained alongside normative governmental imperatives of population management and biopolitical growth. But like Marx, he ultimately begs the question of how to account for the enduring nature of this always waning, quasi-hallucinatory genocidal force.55

It is not, moreover, only spectacular violence, but the slow, repetitive, incremental, often concealed violence of appropriation that needs to be considered here. If socially necessary labor time constitutes value for capital, as Jason Moore writes, such value is embedded in a “web of life” that capital uses to exploit formally free wage labor. Marxist theory that considers the most distinct undertakings of capitalism to be economic exploitation and the production of surplus value separating economic compulsion from direct domination fails to recognize what may be an even greater capitalist novelty: the dynamic by which capital is able to “identify, secure and channel unpaid work outside the commodity system into the circuit of capital.” As Marxist-feminists have long noted, “The appropriation of accumulated unpaid work in human form,” including the labors of biological and social reproduction undertaken the world over by women, provides the real historical conditions for “socially necessary labor time.” A “narrow sphere” of productive relations, in this view, depends upon a “more expansive sphere of appropriation” in which cheap human and extrahuman nature “are taken up by commodity production.”56

Embodied in the figures of the slave, the migrant worker, the household worker, the chronically unemployed, and others like them, appropriation encompasses both privatized and publically sanctioned coercion and ethico- political devaluation inseparable from capitalist processes of assigning value. Thus, rather than opposing notions of absolute sovereignty and its power of life over death with a biopolitically, productive materialist history, we might instead recognize how the two are inextricably linked through the conquest/commodification of Black bodies (as well as in the conquest/commodification of indigenous lands) that for Marx comprises the moment of “so-called primitive accumulation.” This connection extends to the ongoing unpaid work of women the world over, accumulated unpaid work represented by labor migration, and war capitalisms differentiation between internally ordered, rule-bound spaces of production and market exchange and exceptional zones of armed appropriation. The latter are not only domains for enacting “plunder”—that is, primitive accumulation (or accumulation by dispossession)—but also for developing cutting-edge procedures, calculations, and fungible systems of commercial and military infrastructure—the slaver s management of human cargo, railways of extraction and settlement, coerced urbanisms, strategic hamlets and forward military bases—that are able to proceed insofar as they are unfettered by legally protected human beings, thus advancing new prejudices that build upon the old.

#### Withdrawing from politics and material production causes massive die off

**Lear 12**

(Ben, <https://viewpointmag.com/2012/05/18/lifeboat-communism-a-review-of-franco-bifo-berardis-after-the-future/> 5-18)

What does the end of the future mean for rad­i­cal pol­i­tics? It is at this point that Bifo’s argu­ment becomes prob­lem­atic. In an argu­ment that inter­sects with groups such as Tiqqun, Bifo argues that we must see “Com­mu­nism as a neces­sity in the col­lapse of cap­i­tal.” Dis­tant from the vol­un­tarism of pre­vi­ous forms of Com­mu­nist pol­i­tics, this “post-growth Com­mu­nism” will be best under­stood as a nec­es­sary response to capital’s refusal of labour. Cut adrift from the “oppor­tu­nity” to work, with wel­fare sys­tems dis­man­tled, Bifo argues that we will wit­ness the pro­lif­er­a­tion of zones of auton­omy respond­ing to the needs of an increas­ingly pre­car­i­ous and super­flu­ous social body. Com­mu­nist pol­i­tics will emerge from an exo­dus, both vol­un­tary and com­pul­sory, from a stag­nat­ing and increas­ingly preda­tory state-capital nexus. This exo­dus is both social, in the devel­op­ment of an alter­na­tive infra­struc­ture, and per­sonal, in the with­drawal from the hyper-stimulation of the semi­otic econ­omy. Bifo aban­dons hope in col­lec­tive con­tes­ta­tion at the level of the political. Bifo’s pol­i­tics could be described as a kind of “lifeboat com­mu­nism.” As the cri­sis rip­ples, mutates, and deep­ens, Bifo sees the role of com­mu­nism as the cre­ation of spaces of sol­i­dar­ity to blunt the worst effects of the cri­sis of social repro­duc­tion. Gone is the demand for a bet­ter world for all, the lib­er­a­tion of our col­lec­tive social wealth, or the unlock­ing of the social poten­tials of tech­nol­ogy. Rather, Bifo’s pol­i­tics are based around insu­lat­ing a **nec­es­sar­ily small** por­tion of soci­ety from the dic­tates of cap­i­tal. By with­draw­ing from the polit­i­cal sphere, we accept the like­li­hood of los­ing the final scraps of the wel­fare state and **con­cede the ter­rain of the polit­i­cal to zom­bie pol­i­tics and preda­tory cap­i­tal.** Rather than seek­ing new forms of orga­ni­za­tion to re-enter the polit­i­cal stage, Bifo seems to sug­gest that we seek shel­ter beneath it as best we can. This shy­ing away from the polit­i­cal stage is the weak­ness at the heart of the book. Recent erup­tions of polit­i­cal strug­gle have cap­tured the col­lec­tive imag­i­na­tion because they demon­strate that polit­i­cal con­tes­ta­tion is **still pos­si­ble today**, in spite of the obsta­cles Bifo has described. The Occupy move­ment and the upris­ings in the Mid­dle East and North Africa have res­onated with all those who still have hope in col­lec­tive strug­gle. Although these move­ments have encoun­tered vary­ing prob­lems, to which we must develop solu­tions, they dis­pel the idea of an unchange­able present. The cur­rent block­ages to suc­cess­ful organ­is­ing have been shown to be strate­gic and tac­ti­cal, not ter­mi­nal. **Mis­di­ag­nos­ing** the cur­rent iner­tia of post-political pub­lic life **as** a ter­mi­nal con­di­tion leads the left towards an **evac­u­a­tion of the polit­i­cal**, while we should instead reassert its pri­macy. If we aban­don any hope of fight­ing in, against, and beyond the exist­ing archi­tec­ture of the state and cap­i­tal, and instead seek refuge in small com­munes, and go-slow prac­tices, we aban­don all real hope of a gen­er­al­ized, or gen­er­al­iz­able, eman­ci­pa­tory pol­i­tics. Although Bifo’s analy­sis of the dif­fi­cul­ties of col­lec­tive action res­onates with all of us who have attempted to orga­nize strug­gles in the past few decades, the pro­posal for a **sim­ple with­drawal from cap­i­tal­ism is a bleak pol­i­tics indeed** – which, at its most opti­mistic, calls for an orderly default by por­tions of the pro­le­tariat. The hori­zons of com­mu­nist pol­i­tics appear much nar­rower when cap­i­tal­ism is no longer seen as the repos­i­tory of a vast store of social wealth await­ing col­lec­tive redis­tri­b­u­tion, but rather rede­fined as an unas­sail­able site of uni­ver­sal and per­ma­nent aus­ter­ity com­bined with widen­ing social redundancy. It is hard to imag­ine a net­work of self-organized projects and sys­tems sup­port­ing the **major­ity of the pop­u­la­tion** in the con­text of an increas­ingly preda­tory cap­i­tal­ism. Emerg­ing from the and iso­lated left­ist scenes, this lifeboat com­mu­nism will by its very nature have a **lim­ited car­ry­ing capac­ity**, as the anar­chist expe­ri­ence in post-Katrina New Orleans attests. The lifeboats that Bifo calls for will undoubt­edly be too small and makeshift to har­bor us all. The cri­sis is twofold. It is a cri­sis of cap­i­tal­ist prof­itabil­ity, and of an increas­ingly pre­car­i­ous and sur­plus global pro­le­tariat whose repro­duc­tion (as both labour and body) is under threat. It is unlikely that the pro­lif­er­a­tion of com­munes, squats, food co-ops, file shar­ers, urban gar­den­ers, and vol­un­tary health ser­vices will bring forth a new, bet­ter world. But while the cur­rent seem­ingly post-political sit­u­a­tion throws up mas­sive obsta­cles to orga­niz­ing, there is still a poten­tial for col­lec­tive con­tes­ta­tion. The cap­i­tal­ist state, racked by its own legit­i­macy cri­sis and weekly polit­i­cal scan­dals, is more vul­ner­a­ble than it appears. We need only recall the period of unex­pected hope built by stu­dents in Britain, occu­piers in Oak­land, and vast swathes of North Africa and the Mid­dle East dur­ing the past two years. These move­ments were mobilised through the betrayal of a vision of the future – but along­side their rage, they put forth a hope which can guide our politics. The task at hand is to unlearn old behav­iour and to forge new tac­ti­cal and organ­i­sa­tional weapons for strug­gle. Bifo’s con­tri­bu­tion is a timely and chal­leng­ing one, but it ulti­mately leads us back towards a DIY cul­ture and “out­reach” pol­i­tics. As our move­ments come to terms with these lim­its, we must also hold onto the belief that lux­ury for all is pos­si­ble. The social poten­tial of unfilled blocks of flats, emerg­ing tech­nolo­gies like [3D-printing](http://www.open-designism.com/profiles/blogs/finally-it-has-happened-the-pirate-bay-goes-product-bay), and the desires of the mil­lions of under­em­ployed, should remind us of this. This will not be pos­si­ble with­out a col­lec­tive strug­gle against the state and the demands of cap­i­tal, one which simul­ta­ne­ously defends what we have and attempts to move beyond it. A retreat to lifeboat pol­i­tics is both pre­ma­ture **and a self-fulfilling prophecy**. While Bifo cor­rectly analy­ses the cur­rent con­junc­ture – clearly iden­ti­fy­ing the post-political state, the weak­ness of the Left, the cri­sis of prof­itabil­ity and new forms of labour, and their impact on the sub­ject – his polit­i­cal pre­scrip­tions lead us in the wrong direc­tion. Just as Bifo does, we place the strug­gle against work at the cen­ter; but we can also seek to lib­er­ate social wealth, rather than insu­late a lucky few from the rav­ages of cap­i­tal. Rather than “No Future,” we must raise a dif­fer­ent ban­ner: “The future’s here, it just needs reorganizing.”

#### Affective modes of resistance presume “immaterial labor” modeled on liberal bourgeois subject. Alternative produces individual, sporadic benefits which proves it links to their stimulation args

Vrasti, PhD, 11

(Wanda, Postdoctoral fellow@humboldt, ““Caring” Capitalism and the Duplicity of Critique,” Theory & Event Volume 14, Issue 4, 2011)

Governmentality scholars have not missed these complexities entirely. They are well aware that disciplinary control starts at the level of our most intimate and private spheres. The problem, however, with a critique that focuses so heavily on the economizing effects of capitalism is that it suggest (even if involuntarily) the solution would be to humanize capitalism, consume less, donate more to charity, make work more rewarding, protect the environment and, in general, help business gets its soul back. The twin concepts of “caring” capitalism and “benevolent” biopolitics, I have employed here, should signal that although we are already moving towards a “new,” i.e., more benevolent, inclusive, therapeutic economy, there is no such thing as a better version of capitalism. The only purpose of the current “roll-back” phase of neoliberalism, where economic conduct is being emotionalized, bureaucratic organization styles are flattened, structural adjustment plans are turned into good governance and microfinance programs, and privatization is converted into public-private partnerships, is to solve the tensions and manage the problems of previous waves of neoliberalization.63 What worries me about governmentality critique is not so much its belatedness (the fact that it does not realize that our present mode of “flexible” neoliberalism is already a product of our collective dissatisfaction with a system governed purely by economic schemata) or its behaviorism (the fact that it stretches the homo oeconomicus model of action so far as to sweep over the complicit and/or subversive potentials of subjectivity). Rather, what concerns me is that, in overlooking the increased capacities of neoliberal ideology to invest individuals with veritable meaning and pleasure, Foucauldian critiques of governmentality end up lobbying for a type of “bioeconomy,” which maybe is not as lethal as previous modes of accumulation, but in its ambition to care for us to death is bound to suffocate us nonetheless.

“Caring” Capitalism is Self-destructive Capitalism

If governmentality studies exaggerate the trope of economic action, thus ignoring the possibilities of capture that lurk behind our efforts to resist a cold and callous version of capitalism, autonomist Marxism suffers of the opposite problem. It shares a naturalist belief in the self-destructive capabilities of late capitalism precisely because it recognizes that the battle for the social reproduction of capitalism is being fought on territories which were once ornamental or external (if not outright inimical) to value production.64 The communicative and affective competencies (what autonomists call "general intellect") required by the "new economy" are the very same dispositions that will allow us to short-circuit biopolitical production and "become common" again. It is just a matter of time until workers realize that capital, especially in its cognitive guise, has lost its productive function of ensuring cooperation and circulation to become a purely parasitical structure that serves no other purpose than to expropriate our common laboring efforts.65 Once this injustice is recognized nothing will stand in the way of emancipation. It seems to me that this overly optimistic celebration of the subjective potential of labor, which fits in with the greater "turn to affect" that has emerged in cultural studies, mystifies the inherently duplicitous character of affect. To place trust in the self-destructive capabilities of late capitalism seems excessively optimistic seeing how the communicative and affective competencies demanded by the "new economy" have done more to solidify the stronghold of neoliberal ideology than erode it. Autonomist Marxism tells roughly the same story as Foucauldian governmentality critique, albeit with a few modifications: neoliberalism is replaced with post-Fordism, subjectivity with living labor, and governmentality with biopolitical production. Where Foucault talked of neoliberalism as a general philosophy that takes the market into the guiding principle for all human action, the Marxian master-category of post-Fordism grounds the neoliberal ethos in the history of 1960s and 70s labor struggles and economic shocks. In operaismo66 (workerist) terms, post-Fordism is defined as a neoliberal tactic deliberately trying to fragment the relatively firm class alliances of the postwar period through technological innovation and economic globalization, and restore the power of managerial and political elites. Technological automatization, large-scale outsourcing, non-standard employment relations, and the overall state of economic precarity (in work, housing, finance, education, citizenship practices, and affective relations) that followed these waves of neoliberalization sought to respond to shop floor disaffection over tedious and repetitive jobs, but also discipline the "revolt against work" of earlier decades. The greatest merit of what appears to be primarily a terminological shift from neoliberalism to post-Fordism is to make labor, something which not only political economy but Marx himself neglected, the subject of historical transformation. Instead of a somewhat generalized notion of subjectivity, autonomist thought grants ontological primacy to the proletariat. Work, the master relation of all human interaction, is the place where subjectivity is produced. Or, to put it differently, the waged relation, generalized across the entire social field, is the central method of control: work on yourself, your education, your finances, your personal health, and your social relations. This over-privileging of labor might seem strange considering that, especially in places blessed with the social, cultural, and symbolic rewards of post-industrialism, capitalism is less about producing goods and services than about reproducing hospitable forms of life (e.g., bodies, subjectivities, social relations, material processes, desires, and fantasies). Yet for autonomist Marxists it is precisely these affluent contexts, where work is largely immaterial, recreational, and consumptive, that the hegemonic tendency of flexible capitalism is most evident.67 The days of mass production may be over, at least as a formula for growth, but the logic of production now extends throughout the entire social field, collapsing labor and leisure, prosperity and sociality, philanthropy and entrepreneurship, into a so-called "social factory." Although similar, the effects of biopolitical production or "bioeconomy" are far more severe, critical Marxists argue, than those implied by Foucauldian governmentality. Whereas neoliberal governmentality tries to make the "economic perspective [...] coextensive with all of society"68, biopolitical production recognizes the limits of economic rationality and makes the "raw material of human relations"69, that is, our propensity towards language, communication, creativity, community, and everything else we are used to thinking is autonomous or alternative to capital, immanent to value production. Several critiques have been raised against this strand of Marxism, especially in the form popularized by Hardt and Negri's trilogy - Empire, Multitude and Commonwealth. More loyal epigones accuse Hardt and Negri of abdicating from many of the core tenets of Marxism (e.g., explanatory primacy of relations of production, objective class interests, and the utopia of communism) and downgrading Leftist politics to a sentimental affiliation with no substantial political value.70 Feminist Marxists, on the other hand, take issue with Hardt and Negri's gender neutrality. An entire tradition of feminist analysis on the role of women's work in reproducing the working class, the enclosure of women's bodies in exploitative and precarious labor conditions, and the gender hierarchies that make all of this possible have been swept away by Hardt and Negri's superficial discussion of "affective labor."71 Perhaps the most important accusation, however, charges members of the post-operaista Left with exaggerating the intellectual and immaterial components of modern life, both in numerical terms and as a strategic move. Immaterial labor, broadly defined, is work which includes and relies upon activities not traditionally considered as part of work, such as tastes, opinion, sociality, communication, creativity, leisure, art and affect. It is work which regardless of its material substance, extracts value from intangible properties, like knowledge, information, sociality or emotional response. Its goal is not to produce certain economic value, social good, or cultural product, but to implode the distinctions between these categories by producing social life itself.72 Critics interject that immaterial labor describes only the experiences of liberal bourgeois subjects (e.g., entrepreneurs, freelancers, writers, artists, architects, designers, academic, etc.).73 The post-industrial age Hardt and Negri proclaim can be accepted only if we gloss over the vast majority of the world's population employed in agriculture and industry as well as the army of low-skilled and undocumented laborers (e.g., cleaners, nannies, waiters, etc.) needed to sustain the creative juices of the few. Though Hardt and Negri go to great lengths to explain that immaterial labor is hegemonic in qualitative (not numerical) terms - immaterial labor is hegemonic in the same way industrial labor was 150 years ago74 -, critics doubt the usefulness of this gesture. Even if immaterial labor were the norm-setting mode of production which all other forms of work must emulate and be assessed against, this concept still does nothing to restore or produce cross-class alliances between computer programmers and construction workers, artists and agricultural workers. The work of communicating and translating these distinct experiences of precarity is in no way impossible, but it is also not a necessary consequence of "affective labor."75 Still, Hardt and Negri are not that easily discouraged. They trust that, in asking labor to become more "intelligent," capital is sawing the seeds of its own destruction. The very same qualities "new entrepreneurs" need to manage and organize themselves without the direct supervision of capital can be used for radical self-organization. In typical Marxist fashion, heightened exploitation and precarization can only work to capital's disadvantage because eventually the system is bound to crumble under the weight of its tensions and contradictions. What is conveniently forgotten here is that, historically, capitalism has always been very skilled at stealing the subjective potential, the "democratic distemper"76 of the workforce to make accumulation tolerable and necessary

again. The very same affective and intellectual predispositions that would allow labor to spontaneously organize itself are also what tie individuals to the gratifying, expressive, and pleasurable promises of essentially precarious and exploitative economic arrangements. Not only are the examples of the Zapatistas, the Seattle protests, and the Invisible Committee far too scattered to make real the dream of the multitude Hardt and Negri announce, but there is also not enough specification as to how or why this multi-headed subject should opt out of the benefits of immaterial work (e.g., prosperity, recognition, creativity, artistic expression, self-esteem) to join a rather demanding, lengthy and uncertain revolutionary road. As Madra and Ozselcuk accurately observe, ... there is very little discussion of why this post-Fordist subjectivity would not resist (for there are many who don't) and perhaps even derive enjoyment from this game of 'economic incentives,' the neoliberal universe of individual responsibility, pursuit of self-interest, and transgressive consumption. Nor do we find a discussion of the subjective investments and affective regimes that will enable these post-Fordist subjectivities to reorient themselves ethico-politically to resist the capture of Empire and move beyond the rule of capital.77

#### Breaking down concentrations of economic power key to defeat racial capitalism. Changing the political-economic framework for capital and labor is race-conscious, not liberal colorblindness. The power of big business and the Chicago school consolidated racist effects of capitalism.

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This system of racial capitalism is a result of policy choices that structure our political economy. Modern systems of precarious work are rooted in histories of extractive labor models, from Jim Crow to undocumented immigrant labor. Many black and brown workers were cut out of the twentieth-century New Deal social contract. Zoning policies have deliberately concentrated poverty and pollution—and therefore poor health—in black and brown neighborhoods while securing economic gains and class advantage for wealthier and whiter communities. The rise of predatory systems of student and consumer debt paper over the erosion of the safety net and fuel returns for financial interests. The racialization of [End Page 109] public goods, from healthcare to welfare to food stamps, has helped drive austerity and the dismantling of the safety net.

These policies are sustained by a set of interests and ideologies. Businesses directly benefit from these extractive economic models. But so too do middle- and upper-class constituencies. An alliance between big business, those hostile to racial integration and the civil rights movement, and anxious and self-interested affluent elites is at the heart of the modern conservative coalition. These political arrangements are legitimated by market fundamentalism and color-blind notions of fairness and neutrality that obfuscate the deep unfreedom and racial hierarchy of our economic system.

The COVID-19 crisis exposes the harsh reality of this system. It might also animate a more equitable and inclusive reimagining of our political economy. We need to direct our political energies toward the liberation of black and brown people—and in so doing, secure the liberation for all of us from the inequities of modern capitalism.

Right now, there are four key fights that could shift the balance of power in economic life.

First, we need to dismantle the concentrations of private power that dominate and effectively govern our economy for their own benefit. This means taking on megafirms and monopolies like Amazon and the world of high finance—sectors that will exercise even more control over the allocation of goods, services, jobs, and investment in the post-COVID-19 era. We need a reimagined anti-monopoly policy agenda that encompasses everything from breaking up large corporations to public utility regulations for privately run infrastructures like retail platforms and the financial services that mediate access to basic credit.

Second, we need to build on this moment of labor mobilization—there have been hundreds of strikes during the pandemic—to advocate for workplace democracy, including a voice for workers on corporate boards and sectoral bargaining to set wages and labor standards.

Third, we need to reinvest in public goods and the public provision of basic necessities in everything from healthcare to child care to an expanded safety net. This also means rescuing the U.S. Postal Service, pursuing public banking, and restoring investments in (and accountability for) utilities charged with providing water, electricity, and other critical services. A commitment to genuinely inclusive public provision also requires enforcing equitable access, undoing exclusionary models of zoning and means-testing that work to limit who receives high-quality public goods.

Fourth, these policies need to be backed by a commitment to inclusive political power. We cannot achieve or sustain a liberatory economic democracy without real political democracy. We have to undo racist systems of voter suppression, and we need working-class people to have [End Page 110] more direct control and leverage over administrative governance itself, from the local zoning board to the heights of the Federal Reserve.

The COVID-19 crisis has accentuated our existing systems of extraction and exclusion, which already put millions of Americans in physical and economic danger. By dismantling those underlying structures, we can create a political economy premised not on the inequities of racial capitalism, but on democracy. [End Page 111]

#### Turn – challenging workplace subordination key to time and energy for other activities. Political struggle over wage labor doesn’t denigrate other forms of labor.

Damian **WHITE** Prf. Rhode Island School of Design **’19** in *Rethinking the Environment for the Anthropocene* eds. Manuel Arias-Maldonado & Zev Trachtenberg p.198-199

More generally, agencies are everywhere in critical design but the potential creativity of labor is almost completely missing from a great deal of the discussion (see Wark 2015; Goldstein 2018). By referencing labor, of course, I take it as given that we cannot understand this in the traditional singular and masculine fashion that would take us back behind the gains and insights of feminist, queer, post-colonial political economy or political ecology. Our labor is always hybrid (enrolling humans and non-humans) and queer in being simultaneously classed, gendered, racialized, bound up in the dichotomies of first/third world, able/disabled and other modes of social domination and subordination (Moore 2015; Battistoni 2016). A coherent accounting of labor in worlds torn between industrial and post industrial economies must acknowledge how it is material and immaterial, direct and affective, physical, cognitive and emotional. Our socio-natural reality is a product of constant hybrid organism-environment-interactions where all organ- isms, including humans are in a process of actively making their worlds (Harvey 1996; Arias-Maldonado 2015; Wark 2016; White, Rudy and Gareau 2016). But nevertheless, the relations between critical design and labor need to be carefully explored for an Anthropocene politics that is committed to the just transition.

Much critical design futuring to date has placed a great deal of attention on everyday life as the site for transition experimentation (see Fry, 2009; Manzini 2014; Irwin, Kossoff and Tonkinwise 2015). This has value, but a credible vision of the just transition has to acknowledge the extent to which many of our fellow working men and women across the planet find themselves in conditions of servitude at work. There are debts to be paid, childcare to be done, eldercare to engage with, bosses to please and all manner of other modes of subordination to carefully negotiate as we make our way through everyday life. Unless we grapple with the way so many of our fellow citizens are effectively still feudal subjects “in the family, the factory and the field” (Robin 2011:15), we will not only delimit the audience for transition futuring but underestimate the forces that press against the possibility of having the time or energy to be involved in civic experiments to enable just and democratic transition futures. Critical forms of design futuring must address the question of work simply because the workplace and control over terms and conditions in the workplace will continue to be a critical site for political struggle for the foreseeable future as will the demand for more leisure (see White 2015b).

#### Anti-statist mutualism cannot cope with large-scale problems like climate and redistribution. Mutualism alone gets coopted to decrease state support for social provisioning.

Damian **WHITE** Prf. Rhode Island School of Design **’19** “Ecological Democracy, Just Transitions and a Political Ecology of Design” *Environmental Values* 28 p. 44-46

Debate has ranged in urban design circles for many years now as to how we can reconcile the tension between Jane Jacob’s vision of a bottom-up driven vision of an urban future and the vision of the master builder offered by Robert Moses. Thinking beyond both forms of ‘horizontalism’ that overstate the capacities of grass-roots innovation to change the world and paternalistic ‘verticalist’ imaginaries with their command-and-obedience models of social change would seem long overdue. Transition projects compatible with just, democratic and effective outcomes are going to be multi-scalar and complex in their forms of institutional design. We are going to need effective representative and participatory democratic structures, modes of radical municipalism and strong democratic states, informed and engaged publics and accountable professionals, civic experts and responsible civil servants who serve the public interest to build sustainable and post carbon futures.

What, though, are the limits of contemporary radical design theory? Let me now draw out four concerns here. First, it could be observed that a great deal of radical and transition design recognises the need for multi-level and multi-scalar modes of redirective practices; the levels of everyday life and the local are almost always foregrounded as spaces for intervention for a design politics. In part, this is a product of the fact that these spaces often provide the initial sites where much design is able to make an intervention. There is some variation here between industrial design, service design, landscape design and urban/regional planning, with the scales of engagement progressively chang- ing. If users are persistently attended to in design, and radical designers like Manzini (2015) have thought hard about how micro-publics could be brought into more participatory engagements with the project of redesigns through community planning, public meetings, new interfaces and so on, the broader institutional contexts and representative structures that could guide and direct a design politics functioning at larger scales have not been adequately theorised. The role that local, regional, federal, national and post-national state structures might play in facilitating or supporting design for the just transition is under-theorised.

Second, the overwhelming focus in radical design on civil society as the space of innovation has ensured that most contemporary currents of radical design have had very little to say about the opportunities for democratic redesign of the workplace or the proposition that radical designs might actually emerge out of workplace struggle(see White 2015) as well as broader civic struggles for new forms of collective consumption outside the workplace (Cohen 2017; Goldstein 2018). Traditions of worker-orientated design need to be re- covered here. It was designers working with Scandinavian trade unionists in the 1970s and 1980s and attempts to bring together industry democracy with workers’ self-management at the Lucas Plan in the UK (amongst other places) that played a very significant role in inspiring the rise of the participatory de- sign movement (see Ehn et al. 2014). Equally it could be observed that most contemporary radical design literatures have little to say about redesign of the workplace for more emancipatory ends but even less to say about how public institutions could be made more democratic by design but also act as potential partners with civil society to expand the possibilities of drawing publics into design discussions. The state has a very loose presence in Manzini’s visions of a co-created commons (Manzini 2015). It has even less presence in Tony Fry’s vision of redirective practice (Fry 2009), which maintains, in an apocalyptic vein, that existing state forms are unlikely to survive in a radically warmed future marked by social and ecological breakdown and the mass movement of people. John Barry (2012), Christian Parenti (2012) and most recently, Laurence Delina (2016) have all compellingly argued in contrast to these positions that the democratic state, despite its many failings, must play a critical role in transition. Parenti argues that it is the state that is the only institution large enough and powerful enough with the power to: (a) face down the fossil-fuel industry; (b) redirect the trillions of dollars of finance and in- vestment that will be required to fund climate mitigation and adaptation; (c) enact continental scales of energy, green industrial and green infrastructure retrofitting; (d) redirect national research and development priorities towards ecological innovation; (e) embark on long-range national democratic planning to facilitate optimal strategies for climate adaptation and resilience.

Parenti’s statism has its limits. The state can’t do everything. As Hillary Wainwright (1994) has long argued, unless a transition state is held accountable to a fully mobilised transition-orientated civil society engaged in redirective practice, the transition state may well repeat the problems of the conventional state in being ‘all thumbs and no fingers’ (Lindblom, cited in Dryzek 2000: 24). But it seems evident that post carbon transitions are unlikely to be suc- cessful without reworked relations between a democratic transition state and democratic transition currents in civil society.

Third, radical and critical design literatures are insufficiently alert to the many ways in which neoliberalism can happily feed off, co-opt or co-exist with all manner of bottom-up social design experiments and co-created institutions. Here lies the danger of Manzini’s tendency to take as given neo-liberal stories of the end of the welfare state. We have already seen in the United Kingdom that conservative projects like David Cameron’s Big Society can easily co-opt all manner of mutualist and bottom-up social design enterprises and use them as arguments for unravelling the welfare state and state provision**.** What is generally missing in a good deal of radical design discourse is extended engagement with the ways in which smart policymaking and revised bureaucratic institutions might be able to protect and augment the voices of civil society and its design experiments from below. The co-creation of alter- native institutions has possibilities, but without macro policy and institutional support for such policies (in the form of a robust green welfare state, a uni- versal basic income scheme, maximum and minimum wages, guaranteed paid time off and the provision of childcare and care for the elderly), diverse modes of eco-design led social innovation can merely end up giving voice and agency to the time rich and commitment light (White 2015).

#### Society can’t function without some amount of work – post-work still entails work, only more coercive.

Henwood, MA, and Jäger, PhD Candidate, 18

(Anton Jäger is is a doctoral student at the University of Cambridge, working on the history of populism in the United States. https://jacobinmag.com/2018/12/post-work-labor-ubi-coercion-capitalism)

DH Fundamentally, if we don’t work, we will die. We will have nowhere to live, no roof over our head, no food to eat, no clothes to wear. I had Kathi Weeks on this show a few years ago when her book came out. I recalled that my first wife had a 1974 Fiat that was a real piece of crap. It was a horrible car. But that was built at the height of Italian operaismo, and the anti-work movement had spread pretty far into the labor in Italy. I kept bringing that car up. I said, “Well, who will make the stuff that keeps society moving?” I never really got a satisfactory answer out of her. She kept changing the story. She wanted to talk about how terrible so much work is, how terrible so many jobs are. But I don’t understand how this anti-work philosophy will put food on the table. AJ Yeah, I think that’s the big question I ask myself. Because they have this vision of work as a suppression of spontaneity, they think that a postcapitalist form of activity — because they always prefer the word “activity” rather than “work” — will have to be spontaneous and will be undone of all its coercive aspects. I think this is not only unrealistic, it’s also undesirable. Some feel like full automation is a really attractive slogan, but at the same time you really have to ask yourself the question of how this works out in practice. The example I often give is that there’s loads of activity today which doesn’t count as work, because it doesn’t meet the sort of benchmark of solvency associated with the market. For example, if you really like handing out ice cream in the park, this is obviously a sort of activity which capitalist markets don’t cater to. If we live in a postcapitalist society, people should be able to just roam around the park and hand out ice cream, because that now counts as a sort of worthy, productive activity basically. DH But where’d that ice cream come from though? AJ Exactly. So the question is, “Where does the ice cream come from?” “Well, it comes from a factory.” “What do you do at the factory?” They say, “Oh, you automate the factory.” The thing is, “Well, who builds the machines for the automated factory? Who trains the engineers who build the machines for the automated factory?” At the same time, this gets you into inevitably political questions of, “What do we automate? How do we automate it? Who do we train for the automation?” At the same time, there’s this kind of problematic regress which, in the end, implies an inevitable end to pure, spontaneous activity, because you have to coerce people into doing certain things. In the end, it’s a sort of coercive moment where you say, “Okay, now we’re actually going to force people to do this, because this is the activity we value as a society.” This problematic regress in the end also shows the sort of weakness of the notion of work that these post-workers have. Because work can be coercive but still fulfilling. This is the whole point about what Marx himself said when he came to postcapitalist laborers, that you need to find these kinds of procedures and you need to find these institutional mechanisms that actually allow coercion or the enforcing of a consensus to be procedurally consistent and transparent, so not arbitrary in that sense.

#### Labor provides sociality and belonging.

Noonan, PhD, 19

(Jeff Noonan is professor of philosophy at the University of Windsor. He is the author of Materialist Ethics and Life-Value and Embodiment and the Meaning of Life. <https://www.newstatesman.com/politics/2019/04/the-problem-with-post-work-2>, 4-15)

Modern economists disguise the divine curse with the more scientific sounding “disutility” of labour, but the message remains the same: labour is antithetical to the good life. Leisure, consumption, fun and games are where it’s at. Labour, in contrast, is forced upon us by social necessity. It is exhausting and boring. If leisure is good and work is bad, and if we want to live good lives, then we ought to devote our intelligence – and our social policies – to finding ways to free our time from the curse of work. Or at least, that is what almost all progressive thinkers believe, whether liberals or socialists. Those thinkers no longer worry about biblical God, because they worship at another altar: technology. The history of technology is the story of offloading the most difficult and unpleasant tasks to machines. On this point, classical political economists and Karl Marx agreed: machines that can do for us what we formerly had to do for ourselves are good, and whatever social impediments stand in the way of creating these machines should be cleared aside. Here, increasing mechanical productivity is seen as the key to progress. If people spend less time working, they have more time for leisure. With increased mechanical productivity, the realm of freedom expands and the realm of necessity contracts, leaving people free to choose how to spend most of their time. In the nineteenth century, technologies that emulated our bodily powers increased mechanical productivity. Steam-driven machines could push, pull, raise and lower vast quantities of things without getting tired or experiencing pain. In short, machines freed workers from the burdens of manual labour by replicating their bodily actions. By freeing our bodies from drudgery, machines seemed to hold out the promise of freeing our minds to think, imagine, invent, create and appreciate. The machines of the nineteenth century did not mechanise the mind or do anything that had a distinctly human character or value, so nobody worried that technology might one day replace all human activities. But we confront a very different techno-social landscape today. Machines now do a lot more than push and pull, raise and lower. And even if they cannot think and feel like humans, they simulate thought in ways that it would have been impossible for nineteenth century scientists and engineers to imagine. We confront a new problem that nineteenth century thinkers could not anticipate: machines doing almost everything for us, including the creative and intellectual work we find most meaningful and satisfying. We must therefore confront the possibility of a future in which human beings really do not need to do anything at all. This might sound like Eden. However, I think we have good reason to believe that a society without work would undermine the relationships we have with each other and with our environment that make our lives meaningful. Instead of worrying about the implications of living in a world where labour disappears as a source of meaning, policy-makers worry about the social crisis that mass unemployment might produce. This is a serious concern. And if we were to solve the problem of machine-induced mass unemployment with something like a universal basic income, then reducing our reliance on wage labour would be a tremendous step along the road to greater freedom. But it would not be a tremendous step on the road to happiness. As I see it, losing the need for labour altogether would lead to an existential crisis. If we were to substitute work for a life of absolute leisure, we would experience a rapid loss of meaning in our existence, manifested as an inability to care for or value anything. Not having to do any one thing rather than another would cause an existential crisis because human beings are social animals who need to be needed. Until today, labour in the broadest sense – giving birth to new humans, caring for them, working with and transforming the products of nature to satisfy basic needs and to create a human world out of nature – has been the primary way we’ve satisfied our need to be needed. Put otherwise, the problem with labour, ie that it has so far been compelled from us by our needs, is precisely what makes it so valuable. At its core, labour is not work for the boss, but work for each other. We become real through the contributions we make to others, and to social life more generally. It is on this basis that we become valuable, and valued, members of a community. If some people are unable to fully realise their abilities because they cannot find meaningful work, the solution is not to abolish work, but make it more widely available. Workers have historically fought for valuable work. Famously, the Luddites are derided for opposing the tidal force of technology, but they did not advance a general critique of technology. In their newspaper articles and petitions they defended their right to perform meaningful labour against the forces and people destroying their way of life. While the Luddites lost, people today still fight for “good jobs” and valuable work. Technology should be developed in a way that gives people the freedom to choose how they will work—how they will satisfy the need to be needed—and not in a way that frees them from that need altogether. If people think my worries about existential crisis are overblown, they should ask themselves: Would we really be better off never having to dig into the earth that sustains us with our hands? Do we really want to be tended by nurse-bots and doc-bots when we are ill? Is it better to download the prof-bot rather than get together in physical space and explore ideas? Will we be happier when there is no longer a need for architects, designers, carpenters, painters? Will computer-generated art really shine light on the human condition? If we pay these questions the attention they deserve, I believe that the answer to each is “no.” Leisure is a necessary respite from the hard work of living, but that hard work—if it does not dominate every moment of waking life, if it can be freely chosen, and if it contributes some good to others—is not a curse. Necessity is not always the enemy of freedom. Needing to be needed makes life meaningful, and labour is the embodiment of that need, even if our hands and minds could be replaced by machines.

#### Pursuit of antimarket purity dooms alternative to irrelevancy – alienates potential allies and assumes non-market economics wouldn’t oppress.

Julie **NELSON** Global Development and Environment @ Tufts **‘6** *Economics for Humans* p. 37-40

Problems with the Market-Critic Prescriptions

At the end of the last chapter, I brought up evidence of poverty and corporate abuses that raise questions about the adequacy of the probusiness, free-market prescription for curing social ills. Do the prescriptions of the market critics for “small is beautiful/’“government to the rescue,” or “separate spheres” solutions give us grounds for more hope?

The “small is beautiful” prescription contains, of course, some truth. It is true that acting ethically is a more complicated process the larger and more complex the level of organization involved. Likewise, the “government to the rescue” advocates make some good points. It is easier for any one company to do the right thing if there is public pressure on all companies to do the right thing, and a government regulation can be a good tool for applying such pressure. On an even larger scale, international public agreements may be the only hope for addressing global climate change issues. These are far too big for any one nation, let alone one company, to take on. And there is some truth in the “separate spheres” view. There are some social welfare problems for which private, market solutions don’t work. Care for people who are poor and ill or otherwise needy cannot be provided on a purely market basis. The funds have to come from somewhere other than the “consumers” of the services. Public or private nonprofit allocations of money are necessary.

But while the values held in high regard by market critics are praiseworthy, and the prescriptions contain partial truths, I find the prescribed solutions lacking when held up to criteria of realism and effectiveness. Sometimes the proposed solutions could cause real damage.

A first problem is that these views tend to assume not only that the market sphere is driven exclusively by self-interest, but that self-interest is exclusive to the market sphere. They often seem to assume that if an organization is small, or nonprofit, or governmental, then non-self-interested motivations can be trusted to take over. We should consider the evidence on this.

Families, for example, are very small nonprofit organizations, presumably governed by interests of love and intimacy (as in the Victorian image).The newspaper reminds us daily, however, that families can also be characterized by domination and abuse, even violence. Sometimes being in a small-scale organization just means being under the thumb of a small-scale oppressor.

Community organizing is a great way to bring a group together to work on issues of social concern and to create opportunities for activism. Community organizing was very effective in South Boston in the 1970s, for instance, when big community demonstrations were organized to fight racial integration of the local public schools. Sometimes community groups carry out agendas of racism. And it is not uncommon for community activists motivated by not-in-my-backyard sentiments to try to push undesirable projects off on some other community. Communities, like individuals, can act in purely self-interested ways.

Nonprofit and religious organizations can bring people together to work for goals other than profit.The Boston diocese of the Catholic Church, for example, is legally not allowed to be motivated by profit. It was the maintenance of its own institutional hierarchies and reputation that motivated it to quietly move priests who sexually abused children from one parish to another, thereby supplying the abusers with fresh victims. Nonprofit institutions—even those ostensibly concerned with maintaining moral and spiritual values—are not immune to evil.

In an era of suspicious elections, campaign finance fiascos, and powerful lobbyists, one has to be naive in the extreme to believe that governments can be trusted to automatically or naturally work for the common good.

Appeals to small communities, nonprofits, or governments to take over economic activities “in the public interest” seem to me to bring in a deus ex machina solution.Yes, it would be nice if it worked. But how do we know that those selfish motivations critics assume drive the market are not also going to show up in families, community organizations, nonprofits, and the state?

A second problem with these views is that they largely pull the rug out from under their own noble drives. Because money and power are associated with greed and oppression, money and power are treated as inherently morally suspect. People who possess these, such as corporate executives who might be willing to engage in ethical discussion (if given the chance), are labeled as the evil “them,” separated by a large gulf from the moral “us.” Thus, potential allies and power bases are eliminated. This aversion to money and power has, I believe, been especially damaging to the sectors of the economy in which hands-on care is provided to children, the sick, and the elderly. Remember this poster: “It will be a great day when the schools have all the money they need and the air force has to hold a bake sale to buy a bomber”? How true. But the antimoney ideology reinforces exactly the bake-sale, nickel-and-dime mentality for human services that that poster decried. The damage this attitude has inflicted on caring work will be taken up further when I look at issues of money and motivations in chapter 4. A third problem is that, even if the prescriptions given by market critics were viable once put in place, there would still remain the problem of getting there. The massive promarket tide now flooding the United States and global institutions presents an intimidating reality check. The “small is beautiful” view tells us that we must have a massive economic restructuring— the thorough destruction of large corporations as a form of economic organization—before we can really be human in our economic lives. This would require a gargantuan change— larger, perhaps, than the Industrial Revolution and the rise and fall of Communism combined. If, on the other hand, we hope to be rescued by the rise of powerful, purely public-spirited interventionist governments, the current political climate makes it look like we may be waiting a very long time. Every step toward wresting control away from those with money and power will, market critics correctly perceive, be resisted by those with money and power.

Some people enjoy tilting at the economic machine—or at windmills, like Don Quixote in his hopeless crusades. In fact, I admire the spirit of people who keep to their praiseworthy, treasured values against all odds. But what if the futures envisioned by market critics, visions that tend to seesaw between the utopian and apocalyptic, are not the only options? What if the proposed solutions are unsatisfactory because the market critics have, unfortunately, combined good values with erroneous “facts” about what an economy is?