# 1NC Round 4

## OFF

### Topicality---1NC

#### The resolution should define the division of ground. It was negotiated and announced in advance providing both teams a reasonable opportunity to prepare. Only a textual reading of the resolution provides a predictable basis for research.

#### USFG means the three branches.

OECD 87. Organization for Economic Cooperation and Development. The Control and Management of Government Expenditure. 179. Google Book.

1. Political and organizational structure of government The United States America is a federal republic consisting of 50 states. States have their own constitutions and within each State there are at least two additional levels of government, generally designated as counties and cities, towns or villages. The relationships between different levels of government are complex and varied (see Section B for more information). The Federal Government is composed of three branches: the legislative branch, the executive branch, and the judicial branch. Budgetary decisionmaking is shared primarily by the legislative and executive branches. The general structure of these two branches relative to budget formulation and execution is as follows.

#### ‘Resolved’ means to enact a policy by law.

Words and Phrases 64. Permanent Edition. Definition of the word “resolve,” given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It is of similar force to the word “enact,” which is defined by Bouvier as meaning “to establish by law”.

#### Should is mandatory.

Court of Appeals of Arizona, Division 1, Department D. 02. IN RE: the Marriage of Vanessa A. McNUTT, Petitioner-Appellee, v. Shane M. McNUTT, Respondent-Appellant. No. 1 CA-CV 01-0255. Decided: June 27, 2002 https://caselaw.findlaw.com/az-court-of-appeals/1315322.html

¶ 26 The word “should” is most commonly used to express obligation or duty.   See The American Heritage Dictionary 1670 (3d ed.1992).   We conclude that, based on the intent of the Guidelines and the interest of parents in the allocation of the federal tax exemption, the word “should” as used in § 25 of the Guidelines is mandatory rather than discretionary.   See Lincoln v. Lincoln, 155 Ariz. 272, 276, 746 P.2d 13, 17 (App.1987) (holding that the trial court abused its discretion by refusing to allocate the dependency exemption).   Thus, the trial court abused its discretion by failing to allocate the federal tax exemption, and we direct the trial court to allocate the exemption on remand.

#### ‘Antitrust laws’ are statutes.

Grimes ’20 [Charles W; 2020; editor of this Licensing Update and Law Professor at Ava Maria Law School; Wolters Kluwer, “Licensing Update,” https://www.crowell.com/files/20200401-Licensing-Update-Chapter-13.pdf]

§13.02 ANTITRUST LAW IN THE UNITED STATES

U.S. antitrust law is defined by federal and state statutes, as interpreted by the courts. The core federal statutes are the Sherman Act,1 passed by Congress in 1890, and the Federal Trade Commission2 and Clayton Acts,3 both passed in 1914. The United States Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC” or “Commission”) (together the “agencies”) share enforcement of most areas of federal antitrust law but with some differences in the scope of their authority. The FTC has sole authority to enforce Section 5 of FTC Act, which prohibits (1) unfair methods of competition and (2) unfair or deceptive acts or practices. The FTC almost always pursues claims for anticompetitive conduct as unfair methods of competition and reserves charges of unfair or deceptive acts or practices for consumer protection violations. Though the FTC's authority to challenge unfair methods of competition goes beyond conduct prohibited by the Sherman and Clayton Acts, in practice the FTC brings most unfair methods of competition cases under the same standards that courts apply to Sherman Act claims. The most prominent exception is the invitation to collude offense, which falls outside the scope of the Sherman Act (if the invitation is not accepted, there is no agreement). The FTC challenges invitations to collude as so-called “standalone” violations of Section 5.4 The DOJ has sole authority to pursue criminal violations of the antitrust laws. Most states have their own state antitrust and unfair competition statutes. State law follows federal law to some extent, though as discussed below, may differ from federal law in meaningful ways that vary state to state. State attorneys general and private parties can also typically file suit to enforce both federal and state antitrust law.

#### Their ‘scope’ is defined by government.

Sagers ’15 [Christopher L; 2015; the James A. Thomas Distinguished Professor of Law and Faculty Director of the Cleveland-Marshall Solo Practice Incubator; Handbook on the Scope of Antitrust, “Introduction,” Ch. 1, p. 9]

B. Sources of the Scope of Antitrust Law

The scope of federal antitrust law is governed by three separate authorities: (1) the U.S. Constitution, (2) the language of the antitrust statutes themselves, and (3) the language of other federal statutes and regulations.

#### Vote negative:

#### 1. Clash: debate requires a predictable topic to motivate in depth research that yields the values of negation and argument refinement. Their interp explodes limits, allows affirmative conditionality, and makes debate a one-sided monologue devoid of argumentation which turns the case.

#### 2. Fairness: the neg should win on average 50% of the time. Entering a competitive activity proves their arguments are shaped by a drive to win. The insurmountable advantage of being affirmative under their unfair model is a reason they should lose.

### Cap---1NC

#### Capitalism transforms individuals into ‘Nobodys’ that creates the conditions for state violence. Our critique does not deny the importance of identity, rather only an understanding of class as the mediating condition of oppression can make movements effective.

Marc L. Hill 16. Distinguished Professor of African American Studies at Morehouse College. *Nobody, Casualties of America’s War on the Vulnerable, from Ferguson to Flint and Beyond*. Atria Books. 17-20.

To be Nobody is to be abandoned by the State. For decades now, we have witnessed a radical transformation in the role and function of government in America. An obsession with free-market logic and culture has led the political class to craft policies that promote private interests over the public good. As a result, our schools, our criminal justice system, our military, our police departments, our public policy, and virtually every other entity engineered to protect life and enhance prosperity have been at least partially relocated to the private sector. At the same time, the private sector has kept its natural commitment to maximizing profits rather than investing in people. This arrangement has left the nation’s vulnerable wedged between the Scylla of negligent government and the Charybdis of corporate greed, trapped in a historically unprecedented state of precarity.

To be Nobody is to be considered disposable. In New Orleans, we saw the natural disaster of Hurricane Katrina followed by a grossly unnatural government response, one that killed thousands of vulnerable citizens and consigned many more to refugee status. In Flint, Michigan, we are witnessing this young century’s most profound illustration of civic evil, an entire city collectively punished with lead-poisoned water for the crime of being poor, Black, and politically disempowered. Every day, the nation’s homeless, mentally ill, drug addicted, and poor are pushed out of institutions of support and relocated to jails and prisons. These conditions reflect a prevailing belief that the vulnerable are unworthy of investment, protection, or even the most fundamental provisions of the social contract. As a result, they can be erased, abandoned, and even left to die.

Without question, Nobodyness is largely indebted to race, as White supremacy is foundational to the American democratic experiment. The belief that White lives are worth more than others – what Princeton University scholar Eddie Glaude calls the “value gap” – continues to color every aspect of our public and private lives.1 This belief likewise compromises the lives of vulnerable White citizens, many of who support political movements and policies that close ranks around Whiteness rather than ones that enhance their own social and economic interests.

While Nobodyness is strongly tethered to race, it cannot be divorced from other forms of social injustice. Instead, it must be understood through the lens of “intersectionality,” the ways that multiple forms of oppression operate simultaneously against the vulnerable.2 It would be impossible to example the 2014 killing of Mya Hall by National Security Agency police without understanding how sexism and transphobia conspire with structural racism to endanger Black trans bodies. We cannot make sense of Sandra Bland’s tragic death without recognizing the impact of gender and poverty in shaping the current carceral state. To understand the complexity of oppression, we must avoid simple solutions and singular answers.

Despite the centrality of race within American life, Nobodyness cannot be understood without an equally thorough analysis of class. Unlike other forms of difference, class creates the material conditions and relations through which racism, sexism, and other forms of oppression are produced, sustained, and lived. This does not mean that all forms of injustice are due to class antagonism, nor does it mean that all forms of domination can be automatically fixed through universal class struggle. Rather, it means that we cannot begin to address the various forms of oppression experienced by America’s vulnerable without radically changing a system that defends class at all costs.

This book is my attempt to tell these stories of those marked as Nobody. Based on extensive research, as well as my time on the ground – in Ferguson, Baltimore, New York City, Atlanta, Hempstead, Flint, and Sanford – I want to show how the high-profile and controversial cases of State violence that we’ve witnessed over the past few years are but a symptom of a deeper American problem. Underneath each case is a more fundamental set of economic conditions, political arrangements, and power relations that transforms everyday citizens into casualties of an increasingly intense war on the vulnerable. It is my hope that this book offers an analysis that spotlights the humanity of these “Nobodies” and inspires principled action.

#### The world is too complex for local politics---multipolar global politics, economic instability, and climate change necessitates a collective response that changes the structural conditions of power rather than tinkering around at the margins.

Nick SRNICEK AND Alex WILLIAMS 15. \*\*Lecturer at City University London and a PhD from the London School of Economics. \*\*Lecturer at City University London. *Inventing the Future: Postcapitalism and a World Without Work*. Verso Books. 34-40.

OVERWHELMED

Why did folk politics arise in the first place? Why is it that folk political tendencies, for all their manifest flaws, are so seductive and appealing to the movements of today? At least three answers present themselves. The first explanation is to see folk politics as a response to the problem of how to interpret and act within an ever more complex world. The second, related explanation involves situating folk politics as a reaction to the historical experiences of the communist and social democratic left. Finally, folk politics is a more immediate response to the empty spectacle of contemporary party politics.

Increasingly, multipolar global politics, economic instability, and anthropogenic climate change outpace the narratives we use to structure and make sense of our lives. Each of these is an example of what is termed a complex system, which features nonlinear dynamics, where marginally different inputs can cause dramatically divergent outputs, intricate sets of causes feedback on one another in unexpected ways, and which characteristically operates on scales of space and time that go far beyond any individual’s unaided perception.23 Globalisation, international politics, and climate change: each of these systems shapes our world, but their effects are so extensive and complicated that it is difficult to place our own experience within them. The global economy is a good example of this. In simple terms, the economy is not an object amenable to direct perception; it is distributed across time and space (you will never meet ‘the economy’ in person); it incorporates a wide array of elements, from property laws to biological needs, natural resources to technological infrastructures, market stalls and supercomputers; and it involves an enormous and intricately interacting set of feedback loops, all of which produce emergent effects that are irreducible to its individual components.24 In other words, the interaction of an economy’s parts produces effects that cannot be understood just by knowing how those parts work in isolation – it is only in grasping the relations between them that the economy can be made sense of. While we might have an idea of what an economy consists of, we will never be able to experience it directly in the same way as other phenomena. It can only be observed symptomatically through key statistical indexes (charting changes in inflation or interest rates, stock indexes, GDP, and so on), but can never be seen, heard or touched in its totality.

As a result, despite everything that has been written about capitalism, we still struggle to understand its dynamics and its mechanisms. Most importantly, we lack a ‘cognitive map’ of our socioeconomic system: a mental picture of how individual and collective human action can be situated within the unimaginable vastness of the global economy.25 Recent decades have seen an increasing complexity in the dynamics that impinge upon politics. We might consider the imminent threat of anthropogenic climate change as a new kind of problem – one that is unamenable to any simple solution and that involves such intricately woven effects that it is hard to even know where to intervene. Equally, the global economy today appears significantly more complex in terms of the mobility of capital, the intricacies of global finance and the multiplicity of actors involved. How well do our traditional political images of the world map onto these changes? For the left at least, an analysis premised on the industrial working class was a powerful way to interpret the totality of social and economic relations in the nineteenth and early twentieth centuries, thereby articulating clear strategic objectives. Yet the history of the global left over the course of the twentieth century attests to the ways in which this analysis failed to attend to both the range of possible liberating struggles (based in gender, race or sexuality) and the ability of capitalism to restructure itself – through the creation of the welfare state, or the neoliberal transformations of the global economy. Today, the old models often falter in the face of new problems; we lose the capacity to understand our position in history and in the world at large.

This separation between everyday experience and the system we live within results in increased alienation: we feel adrift in a world we do not understand. The cultural theorist Fredric Jameson notes that the proliferation of conspiracy theories is partly a response to this situation.26 Conspiracy theories act by narrowing the agency behind our world to a single figure of power (the Bilderberg Group, the Freemasons or some other convenient scapegoat). Despite the extraordinary complexity of some of these theories, they nevertheless provide a reassuringly simple answer to ‘who is behind it all’, and what our own role is in the situation. In other words, they act precisely as a (faulty) cognitive map.

Folk politics presents itself as another possible response to the problems of overwhelming complexity. If we do not understand how the world operates, the folk-political injunction is to reduce complexity down to a human scale. Indeed, folk-political writing is saturated with calls for a return to authenticity, to immediacy, to a world that is ‘transparent’, ‘human-scaled’, ‘tangible’, ‘slow’, ‘harmonious’, ‘simple’, and ‘everyday’.27 Such thinking rejects the complexity of the contemporary world, and thereby rejects the possibility of a truly postcapitalist world. It attempts to give a human face to power; whereas what is truly terrifying is the generally asubjective nature of the system. The faces are interchangeable; the power remains the same. The turn towards localism, temporary moments of resistance, and the intuitive practices of direct action all effectively attempt to condense the problems of global capitalism into concrete figures and moments.

In this process, folk politics often reduces politics to an ethical and individual struggle. There is a tendency sometimes to imagine that we simply need ‘good’ capitalists, or a ‘responsible’ capitalism. At the same time, the imperative to ‘make it local’ leads folk politics to fetishise immediate results and the concrete appearance of action. Delaying a corporate attack on the environment, for instance, is lauded as a success – even if the company simply waits out public attention before returning once again. Moreover, as Rosa Luxemburg pointed out long ago, the fetishisation of ‘immediate results’ leads to an empty pragmatism that struggles to maintain the present balance of power, rather than seeking to change structural conditions.28 Without the necessary abstraction of strategic thought, tactics are ultimately fleeting gestures. Finally, the abjuring of complexity dovetails with the neoliberal case for markets. One of the primary arguments made against planning has been that the economy is simply too complex to be guided.29 The only alternative is therefore to leave the distribution of resources to the market and reject any attempt to guide it rationally.30 Considered in all these ways, folk politics appears as an attempt to make global capitalism small enough to be thinkable – and at the same time, to articulate how to act upon this restricted image of capitalism. By contrast, the argument of this book is that folk-political tendencies are mistaken. If complexity presently outstrips humanity’s capacities to think and control, there are two options: one is to reduce complexity down to a human scale; the other is to expand humanity’s capacities. We endorse the latter position. Any postcapitalist project will necessarily require the creation of new cognitive maps, political narratives, technological interfaces, economic models, and mechanisms of collective control to be able to marshal complex phenomena for the betterment of humanity.

#### The impact is mass death and global violence.

Adrian Parr 13. Associate Professor of Philosophy and Environmental Studies at the University of Cincinnati. *The Wrath of Capital: Neoliberalism and Climate Change Politics*. Columbia University Press. 145-7.

A quick snapshot of the twenty-first century so far: an economic meltdown; a frantic sell-off of public land to the energy business as President George W Bush exited the White House; a prolonged, costly, and unjustified war in Iraq; the Greek economy in ruins; an escalation of global food prices; bee colonies in global extinction; 925 million hungry reported in 2010; as of 2005, the world's five hundred richest individuals with a combined income greater than that of the poorest 416 million people, the richest 10 percent accounting for 54 percent of global income; a planet on the verge of boiling point; melting ice caps; increases in extreme weather conditions; and the list goes on and on and on.2 Sounds like a ticking time bomb, doesn't it? Well it is.

It is shameful to think that massive die-outs of future generations will put to pale comparison the 6 million murdered during the Holocaust; the millions killed in two world wars; the genocides in the former Yugoslavia, Rwanda, and Darfur; the 1 million left homeless and the 316,000 killed by the 2010 earthquake in Haiti. The time has come to wake up to the warning signs.3

The real issue climate change poses is that we do not enjoy the luxury of incremental change anymore. We are in the last decade where we can do something about the situation. Paul Gilding, the former head of Greenpeace International and a core faculty member of Cambridge University's Programme for Sustainability, explains that "two degrees of warming is an inadequate goal and a plan for failure;' adding that "returning to below one degree of warming . . . is the solution to the problem:'4 Once we move higher than 2°C of warming, which is what is projected to occur by 2050, positive feedback mechanisms will begin to kick in, and then we will be at the point of no return. We therefore need to start thinking very differently right now.

We do not see the crisis for what it is; we only see it as an isolated symptom that we need to make a few minor changes to deal with. This was the message that Venezuela's president Hugo Chavez delivered at the COP15 United Nations Climate Summit in Copenhagen on December 16 09, when he declared: "Let's talk about the cause. We should not avoid responsibilities, we should not avoid the depth of this problem. And I'll bring it up again, the cause of this disastrous panorama is the metabolic, destructive system of the capital and its model: capitalism.”5

#### The alt is pragmatic demands upon the state towards an anti-capitalist project. This is necessary to open space for more radical projects. Their strategy cedes the political.

David Harvey 15. Distinguished Professor of anthropology and geography at the Graduate Center of the City University of New York. “Consolidating Power.” Roar Issue 0, 16. https://roarmag.org/magazine/david-harvey-consolidating-power/.

So, looking at examples from southern Europe – solidarity networks in Greece, self-organization in Spain or Turkey – these seem to be very crucial for building social movements around everyday life and basic needs these days. Do you see this as a promising approach?

I think it is very promising, but there is a clear self-limitation in it, which is a problem for me. The self-limitation is the reluctance to take power at some point. Bookchin, in his last book, says that the problem with the anarchists is their denial of the significance of power and their inability to take it. Bookchin doesn’t go this far, but I think it is the refusal to see the state as a possible partner to radical transformation.

There is a tendency to regard the state as being the enemy, the 100 percent enemy. And there are plenty of examples of repressive states out of public control where this is the case. No question: the capitalist state has to be fought, but without dominating state power and without taking it on you quickly get into the story of what happened for example in 1936 and 1937 in Barcelona and then all over Spain. By refusing to take the state at a moment where they had the power to do it, the revolutionaries in Spain allowed the state to fall back into the hands of the bourgeoisie and the Stalinist wing of the Communist movement – and the state got reorganized and smashed the resistance.

That might be true for the Spanish state in the 1930s, but if we look at the contemporary neoliberal state and the retreat of the welfare state, what is left of the state to be conquered, to be seized?

To begin with, the left is not very good at answering the question of how we build massive infrastructures. How will the left build the Brooklyn bridge, for example? Any society relies on big infrastructures, infrastructures for a whole city – like the water supply, electricity and so on. I think that there is a big reluctance among the left to recognize that therefore we need some different forms of organization.

There are wings of the state apparatus, even of the neoliberal state apparatus, which are therefore terribly important – the center of disease control, for example. How do we respond to global epidemics such as Ebola and the like? You can’t do it in the anarchist way of DIY [do it yourself]-organization. There are many instances where you need some state-like forms of infrastructure. We can’t confront the problem of global warming through decentralized forms of confrontations and activities alone.

One example that is often mentioned, despite its many problems, is the Montreal Protocol to phase out the use of chlorofluorocarbon in refrigerators to limit the depletion of the ozone layer. It was successfully enforced in the 1990s but it needed some kind of organization that is very different to the one coming out of assembly-based politics.

From an anarchist perspective, I would say that it is possible to replace even supra-national institutions like the WHO with confederal organizations which are built from the bottom up and which eventually arrive at worldwide decision-making.

Maybe to a certain degree, but we have to be aware that there will always be some kind of hierarchies and we will always face problems like accountability or the right of recourse. There will be complicated relationships between, for example, people dealing with the problem of global warming from the standpoint of the world as a whole and from the standpoint of a group that is on the ground, let’s say in Hanover or somewhere, and that wonders: ‘why should we listen to what they are saying?’

So you believe this would require some form of authority?

No, there will be authority structures anyway – there will always be. I have never been in an anarchist meeting where there was no secret authority structure. There is always this fantasy of everything being horizontal, but I sit there and watch and think: ‘oh god, there is a whole hierarchical structure in here – but it’s covert.’

Coming back to the recent protests around the Mediterranean: many movements have focused on local struggles. What is the next step to take towards social transformation?

At some point we have to create organizations which are able to assemble and enforce social change on a broader scale. For example, will Podemos in Spain be able to do that? In a chaotic situation like the economic crisis of the last years, it is important for the left to act. If the left doesn’t make it, then the right-wing is the next option. I think – and I hate to say this – but I think the left has to be more pragmatic in relation to the dynamics going on right now.

More pragmatic in what sense?

Well, why did I support SYRIZA even though it is not a revolutionary party? Because it opened a space in which something different could happen and therefore it was a progressive move for me.

It is a bit like Marx saying: the first step to freedom is the limitation of the length of the working day. Very narrow demands open up space for much more revolutionary outcomes, and even when there isn’t any possibility for any revolutionary outcomes, we have to look for compromise solutions which nevertheless roll back the neoliberal austerity nonsense and open the space where new forms of organizing can take place.

For example, it would be interesting if Podemos looked towards organizing forms of democratic confederalism – because in some ways Podemos originated with lots of assembly-type meetings taking place all over Spain, so they are very experienced with the assembly structure.

The question is how they connect the assembly-form to some permanent forms of organization concerning their upcoming position as a strong party in Parliament. This also goes back to the question of consolidating power: you have to find ways to do so, because without it the bourgeoisie and corporate capitalism are going to find ways to reassert it and take the power back.

What do you think about the dilemma of solidarity networks filling the void after the retreat of the welfare state and indirectly becoming a partner of neoliberalism in this way?

There are two ways of organizing. One is a vast growth of the NGO sector, but a lot of that is externally funded, not grassroots, and doesn’t tackle the question of the big donors who set the agenda – which won’t be a radical agenda. Here we touch upon the privatization of the welfare state.

This seems to me to be very different politically from grassroots organizations where people are on their own, saying: ‘OK, the state doesn’t take care of anything, so we are going to have to take care of it by ourselves.’ That seems to me to be leading to forms of grassroots organization with a very different political status.

But how to avoid filling that gap by helping, for example, unemployed people not to get squeezed out by neoliberal state?

Well there has to be an anti-capitalist agenda, so that when the group works with people everybody knows that it is not only about helping them to cope but that there is an organized intent to politically change the system in its entirety. This means having a very clear political project, which is problematic with decentralized, non-homogenous types of movements where somebody works one way, others work differently and there is no collective or common project.

This connects to the very first question you raised: there is no coordination of what the political objectives are. And the danger is that you just help people cope and there will be no politics coming out of it. For example, Occupy Sandy helped people get back to their houses and they did terrific work, but in the end they did what the Red Cross and federal emergency services should have done.

The end of history seems to have passed already. Looking at the actual conditions and concrete examples of anti-capitalist struggle, do you think “winning” is still an option?

Definitely, and moreover, you have occupied factories in Greece, solidarity economies across production chains being forged, radical democratic institutions in Spain and many beautiful things happening in many other places. There is a healthy growth of recognition that we need to be much broader concerning politics among all these initiatives.

The Marxist left tends to be a little bit dismissive of some of this stuff and I think they are wrong. But at the same time I don’t think that any of this is big enough on its own to actually deal with the fundamental structures of power that need to be challenged. Here we talk about nothing less than a state. So the left will have to rethink its theoretical and tactical apparatus.

#### Extinction outweighs.

Seth D. Baum & Anthony M. Barrett 18. Global Catastrophic Risk Institute. 2018. “Global Catastrophes: The Most Extreme Risks.” Risk in Extreme Environments: Preparing, Avoiding, Mitigating, and Managing, edited by Vicki Bier, Routledge, pp. 174–184.

2. What Is GCR And Why Is It Important? Taken literally, a global catastrophe can be any event that is in some way catastrophic across the globe. This suggests a rather low threshold for what counts as a global catastrophe. An event causing just one death on each continent (say, from a jet-setting assassin) could rate as a global catastrophe, because surely these deaths would be catastrophic for the deceased and their loved ones. However, in common usage, a global catastrophe would be catastrophic for a significant portion of the globe. Minimum thresholds have variously been set around ten thousand to ten million deaths or $10 billion to $10 trillion in damages (Bostrom and Ćirković 2008), or death of one quarter of the human population (Atkinson 1999; Hempsell 2004). Others have emphasized catastrophes that cause long-term declines in the trajectory of human civilization (Beckstead 2013), that human civilization does not recover from (Maher and Baum 2013), that drastically reduce humanity’s potential for future achievements (Bostrom 2002, using the term “existential risk”), or that result in human extinction (Matheny 2007; Posner 2004). A common theme across all these treatments of GCR is that some catastrophes are vastly more important than others. Carl Sagan was perhaps the first to recognize this, in his commentary on nuclear winter (Sagan 1983). Without nuclear winter, a global nuclear war might kill several hundred million people. This is obviously a major catastrophe, but humanity would presumably carry on. However, with nuclear winter, per Sagan, humanity could go extinct. The loss would be not just an additional four billion or so deaths, but the loss of all future generations. To paraphrase Sagan, the loss would be billions and billions of lives, or even more. Sagan estimated 500 trillion lives, assuming humanity would continue for ten million more years, which he cited as typical for a successful species. Sagan’s 500 trillion number may even be an underestimate. The analysis here takes an adventurous turn, hinging on the evolution of the human species and the long-term fate of the universe. On these long time scales, the descendants of contemporary humans may no longer be recognizably “human”. The issue then is whether the descendants are still worth caring about, whatever they are. If they are, then it begs the question of how many of them there will be. Barring major global catastrophe, Earth will remain habitable for about one billion more years 2 until the Sun gets too warm and large. The rest of the Solar System, Milky Way galaxy, universe, and (if it exists) the multiverse will remain habitable for a lot longer than that (Adams and Laughlin 1997), should our descendants gain the capacity to migrate there. An open question in astronomy is whether it is possible for the descendants of humanity to continue living for an infinite length of time or instead merely an astronomically large but finite length of time (see e.g. Ćirković 2002; Kaku 2005). Either way, the stakes with global catastrophes could be much larger than the loss of 500 trillion lives. Debates about the infinite vs. the merely astronomical are of theoretical interest (Ng 1991; Bossert et al. 2007), but they have limited practical significance. This can be seen when evaluating GCRs from a standard risk-equals-probability-times-magnitude framework. Using Sagan’s 500 trillion lives estimate, it follows that reducing the probability of global catastrophe by a mere one-in-500-trillion chance is of the same significance as saving one human life. Phrased differently, society should try 500 trillion times harder to prevent a global catastrophe than it should to save a person’s life. Or, preventing one million deaths is equivalent to a one-in500-million reduction in the probability of global catastrophe. This suggests society should make extremely large investment in GCR reduction, at the expense of virtually all other objectives. Judge and legal scholar Richard Posner made a similar point in monetary terms (Posner 2004). Posner used $50,000 as the value of a statistical human life (VSL) and 12 billion humans as the total loss of life (double the 2004 world population); he describes both figures as significant underestimates. Multiplying them gives $600 trillion as an underestimate of the value of preventing global catastrophe. For comparison, the United States government typically uses a VSL of around one to ten million dollars (Robinson 2007). Multiplying a $10 million VSL with 500 trillion lives gives $5x1021 as the value of preventing global catastrophe. But even using “just" $600 trillion, society should be willing to spend at least that much to prevent a global catastrophe, which converts to being willing to spend at least $1 million for a one-in-500-million reduction in the probability of global catastrophe. Thus while reasonable disagreement exists on how large of a VSL to use and how much to count future generations, even low-end positions suggest vast resource allocations should be redirected to reducing GCR. This conclusion is only strengthened when considering the astronomical size of the stakes, but the same point holds either way. The bottom line is that, as long as something along the lines of the standard riskequals-probability-times-magnitude framework is being used, then even tiny GCR reductions merit significant effort. This point holds especially strongly for risks of catastrophes that would cause permanent harm to global human civilization. The discussion thus far has assumed that all human lives are valued equally. This assumption is not universally held. People often value some people more than others, favoring themselves, their family and friends, their compatriots, their generation, or others whom they identify with. Great debates rage on across moral philosophy, economics, and other fields about how much people should value others who are distant in space, time, or social relation, as well as the unborn members of future generations. This debate is crucial for all valuations of risk, including GCR. Indeed, if each of us only cares about our immediate selves, then global catastrophes may not be especially important, and we probably have better things to do with our time than worry about them. While everyone has the right to their own views and feelings, we find that the strongest arguments are for the widely held position that all human lives should be valued equally. This position is succinctly stated in the United States Declaration of Independence, updated in the 1848 Declaration of Sentiments: “We hold these truths to be self-evident: that all men and 3 women are created equal”. Philosophers speak of an agent-neutral, objective “view from nowhere” (Nagel 1986) or a “veil of ignorance” (Rawls 1971) in which each person considers what is best for society irrespective of which member of society they happen to be. Such a perspective suggests valuing everyone equally, regardless of who they are or where or when they live. This in turn suggests a very high value for reducing GCR, or a high degree of priority for GCR reduction efforts.

## Case

### Solvency---1NC

#### Vote negative on presumption. The affirmative can’t scale up or solve any of their offense against each off-case position, let alone resolve their impacts about an insular extra-curricular activity like debate!

### Ballot Bad---1NC

#### Ballots as social change bad

Karlberg 3 (Michael, Assistant Professor of Communication at Western Washington University, PEACE & CHANGE, v28, n3, July, p. 339-41)

Granted, social activists do "win" occasional “battles” in these adversarial arenas, but the root causes of their concerns largely remain unaddressed and the larger "wars" arguably are not going well. Consider the case of environmental activism. Countless environmental protests, lobbies, and lawsuits mounted in recent generations throughout the Western world. Many small victories have been won. Yet environmental degradation continues to accelerate at a rate that far outpaces the highly circumscribed advances made in these limited battles the most committed environmentalists acknowledge things are not going well. In addition, adversarial strategies of social change embody assumptions that have internal consequences for social movements, such as internal factionalization. For instance, virtually all of the social projects of the "left” throughout the 20th century have suffered from recurrent internal factionalization. The opening decades of the century were marked by political infighting among vanguard communist revolutionaries. The middle decades of the century were marked by theoretical disputes among leftist intellectuals. The century's closing decades have been marked by the fracturing of the a new left\*\* under the centrifugal pressures of identity politics. Underlying this pattern of infighting and factionalization is the tendency to interpret differences—of class, race, gender, perspective, or strategy—as sources of antagonism and conflict. In this regard, the political "left" and "right" both define themselves in terms at a common adversary—the "other"—defined by political differences. Not surprisingly, advocates of both the left and right frequently invoke the need for internal unity in order to prevail over their adversaries on the other side of the alleged political spectrum. However, because the terms left and right axe both artificial and reified categories that do not reflect the complexity of actual social relations, values, or beliefs, there is no way to achieve lasting unity within either camp because there are no actual boundaries between them. In reality, social relations, values, and beliefs are infinitely complex and variable. Yet once an adversarial posture is adopted by assuming that differences are sources at conflict, initial distinctions between the left and the right inevitably are followed by subsequent distinctions within the left and the right. Once this centrifugal process is set in motion, it is difficult, if not impossible, to restrain. For all of these reasons, adversarial strategies have reached a point of diminishing returns even if such strategies were necessary and viable in the past when human populations were less socially and ecologically interdependent those conditions no longer exist. Our reproductive and technological success as a species has led to conditions of unprecedented interdependence, and no group on the planet is isolated any longer. Under these new conditions, new strategies not only are possible but are essential. Humanity has become a single interdependent social body. In order to meet the complex social and environmental challenges now facng us, we must learn to coordinate our collective actions. Yet a body cannot coordinate its actions as long as its "left" and is "right," or its "north" and its "south," or its "east" and its "west" are locked in adversarial relationships.

#### Working within legal and political structures is especially key to solve their impacts.

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As against Alfred’s call for eschewing the framework of “sovereignty,” Dale Turner insists that the **protection of Native peoples involves** making their **concerns** and **representations intelligible within** the **legal and political structures of the settler state**. In This Is Not a Peace Pipe, Turner argues that the **political terrain on which Native** peoples **must move** has been **mapped by the settler state** and that **if they are to gain greater traction** for their land claims and assertions of governmental autonomy, they will need to **express them** in ways **that non-Native** people and **institutions can understand**: “As a matter of survival, **Aboriginal intellectuals must engage** the **non-Aboriginal intellectual landscapes from which** their **political rights and sovereignty** are **articulated** and put to use in Aboriginal communities.”66 Given that non-Native political processes already are active in shaping the terms of Indigenous governance and social life, **Native** peoples cannot **afford simply to ignore them or** to insist on the significance of “traditional” knowledge in ways that **speak past non-Native modes of articulation**. Turner suggests that such translation is the work of “the word warrior,” whose “most difficult task will be to **reconcile indigenous ways of knowing with** the **forms of knowledge that define European intellectual traditions**.”67 “Survival” for Native polities, from this perspective, is predicated on a kind of communication in which discrepant “ways of knowing” can be bridged. However, to what extent does Turner’s notion of “**reconcil[ing]” knowledges** also present the struggle over sovereignty as a function of cultural dissonance **between Indigenous peoples and the settler state**? The central question he poses is, “How do we explain our differences and in the process **empower ourselves to actually change** the **state’s legal and political practices**?”68 But does **transposing Indigenous concepts into non-Native terminologies intervene** in the logic structuring “the state’s legal and political practices”? Does such a conversion challenge the jurisdictional imperative and imaginary driving the settler-state assertion of authority over Native peoples?

The idea of “explain[ing]” Indigenous “differences” acknowledges the imperial force exerted under the sign of sovereignty, but it does not contest the state’s monopoly over the legitimate exercise of legitimacy, nor does it prevent those “differences” from being reified, regulated, and subordinated as “culture” in the ways discussed earlier. Alongside the discussion of the necessity for translation by “word warriors,” Turner also calls for a thorough accounting of the violences of settler-state imperialism: “The project of unpacking and laying bare the meaning and effects of colonialism will open up the physical and **intellectual space for Aboriginal voice to participate** in the **legal** and **political practices of the state**.”69 Later, he suggests that **Indigenous intellectuals should** pursue three goals: “(a) they must take up, **deconstruct**, and continue to **resist colonialism** and its effects on indigenous peoples; (b) they must protect and defend indigeneity; **and** (c) they must **engage the legal and political discourses of the state** in an effective way.”70 What kind of “participat[ion]” and “engage[ment]” do such strategies yield?

Although Turner tends to answer this question by focusing on the possibility of explaining Indigenous intellectual traditions, making them comprehensible to non-Natives, the above comments offer another option, namely, deconstructing the dynamics of settler-state power—problematizing the ways it seeks to generate legitimacy for itself. He describes such intervention as “understanding . . . how colonialism has been woven into the normative political language that guides contemporary Canadian legal and political practices,” and folding deconstruction back into the elaboration of “differences” between Natives and non-Natives, he argues, “**indigenous peoples must use** the **normative language of the dominant culture to** ultimately **defend world views** that are **embedded in completely different normative frameworks**.

#### Refusal must be open to iterative refinement which can only be achieved through debating the stasis point of the resolution.

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Alex Zahara, “Ethnographic Refusal: A How to Guide,” Discard Studies, August 8, 2016, <https://discardstudies.com/2016/08/08/ethnographic-refusal-a-how-to-guide/>

Activist researchers have the potential to uncover particularly sensitive information that, when revealed, may have very real social and material consequences for research participants and their communities. Examples of this could include the presence of contamination (in places, bodies or animals), access to knowledge that is considered sacred, or interview responses that are political and potentially identifying. Additionally, we might be given access to potentially painful community events and experiences. As researchers interested in social justice, how do we proceed helpfully and ethically in our research in such situations?

The concept of refusal is one way forward. Refusal is a method whereby researchers and research participants together decide not to make particular information available for use within the academy. It is intended to redirect academic analysis away from harmful pain-based narratives that obscure slow violence and towards the structures, institutions, and practices that engender those narratives. Doing so provides research participants the opportunity to (1) dictate whether knowledge is to be made available within the academy (or elsewhere); and (2) to determine how issues are responded to, when, and by whom. While anthropologists initially dismissed the concept of refusal for producing ‘incomplete’ depictions of marginalized groups (Ortner 1995), Indigenous theorists have reframed refusal as a decolonizing research method (Simpson 2007; Tuck and Yang 2014). According to Linda Tuhiwai Smith’s Decolonizing Methodologies (2012), decolonization requires attending to “…the implications of research for its participants and their communities” (p.19). For her and other Indigenous researchers, doing so necessitates community collaboration and control over research projects (Zavala 2013). Accordingly, the method is centrally concerned with a community’s right to self-representation, regardless of the community under study.

Action

In this section, the term ‘refusal’ is used in two ways: first, to describe the action of when a research participant refuses to engage in a particular topic of conversation or suggests to a researcher that something should not be published; and second, when a researcher—based on their own understanding of a given situation, or in response to research participants—refuses to publish this information. Here are some strategies for identifying and collaborating with research refusals.

Identifying what to refuse:

Preparation: Prior to conducting fieldwork, researchers should do ‘homework’ (Sundberg 2015), making an effort to understand the politics of the information that they’re gathering and producing. In doing so, contextualize your data within ongoing contestations, historical injustices, or hegemonic power relations. In many instances, this might best be done by conducting research in communities that we belong to or are otherwise already accountable to (Moffitt et al. 2015). Determine whether community members are already addressing issues on their own terms (e.g. Simpson 2007). If so, make contact and assess whether research is helpful.

Listen and reflect: When conducting interviews, identify not just overt refusals, but points of hesitation (Cameron 2015), changes in subject (Tuck & Yang 2014b), or semi/untruthful interview responses (Simpson 2007). These may be participant refusals, and should be contextualized or addressed accordingly.

Collaboration: If you’re not a member of the community you are researching with, research partnerships are necessary for confirming whether or not the information you have access to should be made available elsewhere. Participatory Action Research methods ensure involvement in this process (Zavala 2013). Alternatively, researchers might seek advice from specific community members for whom they have already developed a trustworthy relationship (Cameron 2015; Keene 2016). Researchers might also engage in community peer review, presenting research to community members prior to publishing information elsewhere (or refusing to do so).

How to refuse:

Studying up: Rather than studying the suffering of marginalized groups, researchers should focus instead on the systems and people responsible for this suffering (e.g. corporations, governments, or others in positions of power). This particular method is referred to as ‘studying up’. For an overview as it relates to refusal, see Gaztambide-Fernandez (2015).

Knowledge production: Researchers are recommended to ‘engage generatively’ with refusals (Simpson 2007). Doing so involves interpreting refusals— without revealing their content— by analyzing them within their historical or cultural context. See, for example, Dr. Adrienne Keene’s (2016) excellent discussion (and refusal to discuss) Navajo understandings and spiritual practices, and how they have been misrepresented in popular culture (specifically by author J.K. Rowling on the ‘Pottermore’ website).

Image use: Academics using photographs or producing visual outputs should select or digitally alter images (Gonzales-Day 2016) to “shift[] the gaze from the violated body to the violating instruments.” (Tuck and Yang 2014: 241). In doing so, the image itself produces a refusal. See also the images of e-waste centre Agbogbloshie taken by Alhassan Ibn Abdalla and featured in this post, or the example in Image 1 (below).

Ethical Considerations

While researchers may not be required to include refusals in their institutional ethics clearance (since it is an action of not reporting information), there are a number of other ethical considerations that researchers might face. First, because the method is centrally concerned with community representation, refusal necessarily involves aligning with particular individuals or stakeholders. Doing so may result in tensions— with other research participants, partners, or academics— regarding whether or how something should be refused. In turn, researchers should engage in reflexivity (Rose 1997) or ongoing project evaluation (Mathison 2014) in order to ensure they are proceeding forward on the basis of one’s positioning, research goals and ethics (e.g. community self-determination). Second, a researcher has the authority to decide what information is to be refused or how this information is interpreted, resulting in power imbalances between researcher and research participants and creating opportunities for community misrepresentation. In turn, community and participant peer review is necessary to ensure community members are given the final say over what and how information is reported.

#### Their dichotomy stifles choice for Native communities.

Sandy Grande 07. Connecticut College education associate professor], Critical Pedagogy: Where are we now? By Peter McLaren, “Red Lake Woebegone: Pedagogy, Decolonization, and the Critical Project” p330, http://books.google.com/books?id=M97YKJdkJbcCandq=sandy+grande#v=onepageandq=grammar20of20empireandf=false, p.330, accessed 3-17-14)

Audre Lorde’s essay, The Master’s Tools Will Not Dismantle the Master’s House, is one of the most quoted essays in academic history and, I would also venture to say, one that needs rethinking. While it is self-evident that indigenous knowledge is essential to the process of decolonization, I would also argue that the Master’s tools are necessary. Otherwise, to take Audre Lorde seriously means to create a dichotomy between the tools of the colonizer and those of the colonized. Such a dichotomy leaves the indigenous scholar to grapple with a kind of “Sophie’s Choice” moment where one feels compelled to choose between retaining their integrity (identity) as a Naitve scholar by employing only indigenous knowledge or to “sell out” and employ the frames of Western knowledge. Does it signify a final submission to the siren’s son, seducing us into the colonialist abyss with promises of empowerment? Or is it the necessary first step in reclaiming and decolonizing an intellectual space – an inquiry rom – of our own? Such questions provoke beyond the bounds of academic exercise, suggesting instead the need for an academic exorcism. The demon to be purged is the specter of colonialism. As indigenous scholars, we live within, against, and outside of its constant company, witnessing its various manifestations as it shape-shifts its way into everything from research and public policy to textbooks and classrooms. Thus, the colonial tax of Native scholars not only requires a renegotiation of personal identity but also an analysis of how whole nations get trans- or (dis)figured when articulated through Western frames of knowing. As Edward Said observes, “institutions, vocabulary, scholarship, imagery, doctrines, even colonial bureaucracies and colonial styles” all support to the “Western discourse” (Said, 1985, p. 2). In other words, is it possible to engage the grammar of empire without replicating its effects? At the same time indigenous scholars entertain these ruminations, Native communities continue to be impacted and transformed by the forces of colonization, rendering the “choice” of whether to employ Western knowledge in the process of defining indigenous pedagogies essentially moot. In other words, by virtue of living in this world and having to negotiate the forces of colonization, indigenous scholars are given no choice but to know, understand, and acquire the grammar of empire as well as develop the skills to contest it. The relationship between the two is not some liberal dream of multicultural harmony but rather the critical and dialogical tension between competing moral visions.

#### Foreclosing institutions is a dead end to solve material violence – refusal relies on a flawed inside/outside binary that naturalizes conquest

Petrossiants 20. (Andreas Petrossiants is the editorial assistant for E-Flux. Inside and Out: The Edges to Critique. June 2020. E-Flux. Journal #110. <https://www.e-flux.com/journal/110/335739/inside-and-out-the-edges-to-critique/> //shree)

In such a matrix, there are two broad categories applied to artists working in a critical register. The first is “going inside,” with the intention to subvert or usurp the operating protocols of the institution, or to “show the public,” through forms of pedagogy, what is otherwise obfuscated or invisibilized in other domains. Different “waves” of institutional critique have either taken this strategy at face value (Hans Haacke, let’s say), or, following the influence of the social sciences, imagined this posture of mitigating complicity as the only position from which critique is possible—what Andrea Fraser termed “critically-reflexive site-specificity.” The second category, “going outside,” sometimes referred to as “dropping out,” is applied when artists build other institutions, collectively organized/owned or not, or refuse the circuits of art’s commodification. Keti Chukhrov’s description of anti-capitalist critique that operates within capitalist ideology applies to critical art as well. In a forthcoming book she remarks:

The capitalist undercurrent of … emancipatory and critical theories functions not as a program to exit from capitalism, but rather as the radicalization of the impossibility of this exit … The planning and ideological framework is counter-capitalist, but the contents remain either nihilist, or reproduce the status quo of capitalist political economy and sociality in the form of its critique.

The entrance into the walls, apparatuses, protocols, and functions of the institution depends on defining where a border between inside and out can be constituted: a closed door now opened, a computer server now unlocked, a managerial role now usurped, a philanthropy revenue stream now rerouted. And, most often, the fact that these gestures reify or legitimize the very structure being engaged is taken as inevitable.

That said, “dropping out,” unlike going inside, continues to be considered a political strategy in itself. Tactics such as boycotts, general strikes, and sabotage, all carrying with them an element of refusal, are consistently welded to the belief that dropping out is possible. But, it’s different in cultural production. As Vishmidt reminds us, the “key significance” of the many generations of institutional critique “was in laying a track between the critique of institutions and critique of infrastructures; that is, not simply the formal but the material conditions that located the institution in an expanded field of structural violence.” How does one escape from the field if it determines from where, and how, one begins that very movement? Not just the “social field,” per Bourdieu, but rather the entire cultural landscape that is imaged as other to work?

When we think through this assumed differentiation between calculated subversion and performative refusal, it can be seen to mirror other binary sets of possibilities from Marxian aesthetic theory, social historiography, and postcolonial theory: reform vs. revolution, stadial progress vs. historical rupture, organized labor vs. autonomist self-organization, and so on. How then to avoid the mistaken belief that such vectors of action (going in and going out) take place in wholly different sites of contention, when they operate along one border sketched by the institution itself?

#### Refusing modernity is racist – it paternalistically duplicates logics that deny agency for colonized populations to be modern which is ahistorical and the modus operandi of dehumanization – recuperating modernity solves pitfalls

Nissim-Sabat 9, Marilyn, professor emeritus of philosophy at Lewis University, ‘9 [Neither Victim Nor Survivor: Thinking Toward a New Humanity, 2009, p. 97-100]

In chapter five of Her Majesty's Other Children, "Uses and Abuses of Blackness: Postmodernism, Conservatism, Ideology," Gordon writes, For I am not so much antimodern as I am anti-Eurocentrism. There are elements of modernity that I avow and elements that I reject. To reject Eurocentrism is not identical to rejecting European civilization in toto or rejecting modernity, and it is a seriously racist form of reasoning that would make white people the only bearers of a modern consciousness. One would have to conclude, in effect, that black people are incapable of being modern or developing their own forms of modernity or alternatives beyond premodernity, modernity, and postmodernity (102). (Quotations are from Her Majesty's Other Children, unless otherwise noted.) Gordon's statement that he is "not so much antimodern" as he is "anti-Eurocentrism" and does not reject European civilization in toto is but one instance of the critique of postmodernism that permeates many of the essays in his book.2 Here, he points out that rejecting Eurocentrism does not entail rejecting modernism. I begin my discussion with this provocative passage because it exemplifies a dimension of what seems to me to be most valuable in Gordon's work. His claim that rejecting Euro-civilization in toto "is a seriously racist form of reasoning that would make white people the only bearers of a modern consciousness" is quite startling, inasmuch as many of those postmodernists who urge rejecting Euro-civilization and modernism in toto [END PAGE 97] often do so in the name of anti-racism, reflecting the belief that modernism has at the very least perpetuated forms of oppression, if not brought them into existence. Gordon's methodology of rejecting the postmodernist rejection of modernism in toto bears directly on his advocacy of the development of an existential sociology as a corrective to this and other forms of racism, and also on the way in which he grounds existential sociology in the constitutive phenomenology of Edmund Husserl. Thus, importantly, Gordon's critique of postmodernism is neither gratuitous nor tangential to his main themes, nor is it an otiose turning of the tables. Rather, it is integral to his project of recreating radical theory so as to avoid the pitfalls of the past that failed to generate an adequate praxis against racism and sexism and, not coincidentally, led to the abandonment of liberatory theory. In order to develop these themes, first I will show how Gordon motivates his claim that rejection of Euro-civilization in toto is racist. Next, I will elaborate on the theme of decentering philosophy that is central to Gordon's work and can focus his critique of postmodernism. Following this, I will discuss Gordon's advocacy of constitutive, that is, Husserlian, phenomenology and existential sociology as a corrective for postmodern and misreadings. PITFALLS OF THE POSTMODERN CRITIQUE OF EUROCENTRISM As just noted, Gordon claims that rejecting European culture and modernism in toto is a "seriously racist form of reasoning" in that it would "make of white people the only bearers of modern consciousness." The racism evident in such a rejection in toto is evident in how it shamelessly abstracts from the situatedness of black people in their historical and contemporary existence in both Africa and the African diaspora. Rejection of modernism in toto is abstract and ahistorical; as such it reduplicates the ahistoricality that Eurocentrist racism falsely attributed and attributes to Africana culture and black people, for example as found in Hegel. 3 In contrast, there is the example of Frantz Fanon, Africana psychiatrist, philosopher, and revolutionary, whose description and analysis of the existential situation of Africana peoples is unsurpassed today, and gives the lie to the conflation of Eurocentrism with European civilization and modernism. In creating his unique amalgam of revolutionary theory and activism, sociogenic psychoanalysis, and existential phenomenology, Fanon drew on the work not only of Africana thinkers, for example, Cesaire, Senghor, and others, but also on that of Marx, Freud, Merleau-Ponty, and Sartre. The example of Fanon shows that restricting the meaning of modernism and European culture to a [END PAGE 98] culture of domination is a form of essentialism in the most ideological sense. Extirpating those sources of revolutionary, liberatory theory and praxis that arose within modernism, not just in the West, but, globally as well, means what Eurocentrism has always meant: denial that black people have any reflective consciousness or capacity for reasoning at all or for knowing the sources of their oppression, and consequent denial that they can create and have created liberatory theory and praxis. It is in this sense that Gordon maintains that rejection of European culture and modernism in toto is a seriously racist form of reasoning. Gordon sees his own project of developing a liberatory theory and praxis as a continuation and enlargement of the project of Fanon, whose work is an ever-present source of inspiration to him. In Her Majesty's Other Children, chapter 2, "Fanon, Philosophy, and Racism," Gordon describes Fanon's project in this way: ... Fanon's normative position is a form of existential humanism. His call for the "restoration of humanity" makes his existential humanism a form of revolutionary existential humanism. Restoration is here full of irony, for Fanon would have nothing to do with what humanity may have been but what humanity ought to be and possibly could become. It is a restoration of what has never been. It is to struggle toward a new kind of future. For him, the Rousseauean remark of humanity in chains is a lived reality and the demand for a freedom achieved by greater humanization is a lived obligation of every individual. (30) There is abundant evidence that today the need for "greater humanization" is exigent. We live in an environment in which, for example, large numbers of white people, indoctrinated and aided and abetted by the denial of human historical situatedness that characterizes contemporary Western culture with its capitalist engineered pandemic of denial (witness the presidency of George W. Bush in the USA), believe that they have been subjected to systemic institutional discrimination which goes by the name of “reverse discrimination.” Moreover, many white Americans have a paranoid fear of blacks, whereas daily individual and institutional horrendous violence against blacks is tolerated as the norm.4 This situation is a seriously racist form of living in denial of reality with a consequent reversal of responsibility and of the parameters of victimization. As Gordon often points out, Du Bois encapsulated this reversal when he wrote that, instead of being people with problems, blacks in America became a problem people—they became the problem (64). Is not this attitude—that black people are the problem—an enabling factor in the persistence in the USA of police killings of unarmed black people? To see this existential situation for what it is reveals that it is a dangerous distortion to maintain that the contemporary world, with its racism, [END PAGE 99] colonialism, neocolonialism, misogyny, and heterosexism is the consequence or fulfillment of the 'humanist' project of modernity. As Gordon points out, a salient and significant aspect of that modernist project, which was not hegemonic and closed, was and is the quest for a liberatory theory and praxis. Denial of historical and contemporary existential reality is the modus operandi of the culture of dehumanization. Fanon’s and Gordon’s view is that that project of humanization has never yet been fulfilled. That man was born free but is everywhere in chains describes the human situation today at least as well as it described Rousseau's Europe, and humanity is in need, not of a rejection of European civilization in toto, but of a humanizing revolution, that is to say a revolution that will bring forth, as Fanon hoped, a new humanity.

#### Positing conquest thru “genocide” in 1AC King ensures voyeurism, distance from personal accountability

Grande 4 (Sandy, Associate Professor of Education at Connecticut College, Red Pedagogy: Native American Social and Political Thought. 2004. Page 93-94//shree)

Indeed, the marketplace is flooded with the tragic stories of American Indians as lost cultures and lost peoples. Moreover, such stories are told and retold as history, as part of America's dark and distant past. Within the contexts of whitestream history, the consequence of genocide is typically depicted as an egregious but perhaps unavoidable consequence of the country's belief in manifest destiny. While I would never argue that stories depicting the tragedy of genocide (e.g., Indian boarding schools, the Trail of Tears) are not centrally important to the telling of American history, their prominence in the discourse becomes problematic when considered in the wider context of whitestream consumption. In other words, why are these stories upheld as a prime-time programs in the commodified network of Indian history? What is gained from the proliferation of essentialist portrayals of Whitestream domination and Indian subjugation? Such stories, in fact, serve several purposes, none of which contribute to the emancipatory project of American Indians. First, by propagating romanticized images of American Indians as perpetual victims while simultaneously marginalizing the work of indigenous intellectuals and social critics, whitestream publishers maintain control over the epistemic frames of the discourse and thus over the fund of available knowledge on American Indians. The desire for such control is underwritten by the understanding that critical scholarship threatens the myth of the ever-evolving democratization of Indian-white relations. Second, essentialist accounts of Indian history ( framed in good- vs. bad-guy terms) allow the consumer to fault rogue groups of dogmatic missionaries and wayward military officers for the slow but steady erosion of indigenous life, thereby distancing themselves and mainstream government from the ongoing project of cultural genocide. Third, the virtually exclusive focus on Indian history allows the whitestream to ignore contemporary issues facing American Indian communities. As a result, Indians as a modern people remain invisible, allowing a wide array of distorted myths to flourish as contemporary reality: that all the "real" Indians are extinct, that all surviving Indians are either alcoholics or gaming entrepreneurs. Meanwhile, as these images are circulated, the intensive, ongoing court battles over land, natural resources, and federal recognition are relegated to the margins of the discourse, fueling the great lie of the twenty-first century-that Americas "Indian problem" has long been solved.

#### Incommensurability is rooted in essentialism that undermines anti-conquistador struggle thru romanticism that authenticity tests and self marginalizes indigenous populations.

Anderson 9. Chris. Michif (Métis) from western Canada; associate professor in the Faculty of Native Studies, Alberta. “Critical indigenous studies From Difference to Density,” *Cultural Studies Review* 15(2): 80-4. Emory Libraries.

In two recent articles,3 American Indian studies professor Duane Champagne challenges ‘Western’ academic disciplines’ epistemological ability to analyse contemporary Indigeneity.4 Specifically, their failure to consider Indigenous collectivities’ active role in colonial contexts in terms not readily discernable in Western forms of knowledge means these disciplines miss large elements of Indigeneity and, as such, fail to offer a plausible basis for its analysis. Champagne contends that despite its current failure to do so, American Indian studies—extrapolated here to include all Indigenous studies—should instead assume this mantle by presuming the distinctive agency of Indigenous peoples, including a focus on exploring our relations according to our distinctive epistemologies and according to the goals and mandates set by Indigenous communities. Not only will this distinguish Native studies from the rest of the academia, it will better position it to assist Indigenous peoples in righting their relationships with dominant, ‘whitestream’ society.5 I agree with Champagne’s assertion that Indigenous studies—whether within or outside specific departments and faculties—should exist in contemporary academia and that Indigenous communities ought to constitute a central focus to this endeavour. Despite his obvious love for the discipline (a fidelity I share), however, his peculiar positioning of Indigenous studies as different needlessly marginalises our density and, in doing so, unnecessarily gives ground to disciplinary turf long claimed by older disciplines. Thus, although he usefully positions Indigenous communities as producers of complex knowledge about indigeneity, his separation of Indigenous from white society unnecessarily marginalises two elements of our density critical to this relationship: 1) the extent of Indigenous communities’ knowledges about whiteness (a social fact which requires an expertise in ‘Western’ concepts); and 2) the extent to which the production of academic knowledge through Indigenous studies is shaped by the ‘whitestream’ academic relations of power, marking it in tension with other forms of knowledge (such as community knowledge). Both are unfortunate omissions. Regarding the first, the epistemological aprioris of whiteness are a dominant representational source through which Western societies produce and consume Indigeneity. As such, Champagne recklessly jettisons so-called Western disciplinary concepts and methodologies as immutable precisely where and when they are most necessary. Regarding the second, he dismisses the contextual importance of accounting for the academic institutional conditions under which native studies units (are allowed to) exist. My sympathetic critique of Champagne’s argument is divided into three major parts and a conclusion. Part one extrapolates his analysis of current native studies and his prescriptions for how to fix it. In this context I examine his charge that ‘Western’ disciplines (anthropology, history, sociology and so on) are too epistemologically constricted to properly explain Indigenous agency or communities and I emphasise his failure to account for the conditions of possibility under which Native American studies entered into academic history (to borrow Foucauldian phraseology).6 This latter element challenges the relationships he posits between both Indigenous studies and other academic disciplines and Indigenous knowledge within and outside the academy. Part two unpacks his tropes to reveal an epistemological and ontological essentialism which positions Indigeneity as separate from (his notion of) colonialism, such that an endogamous focus on the former obviates the need for accounting for the influence of the latter (or at least, that native studies can analyse the former in a manner which separates it from the Western academic herd). I argue that Champagne reproduces a variant strain of ‘Aboriginalism’ 7 that oversimplifies contemporary Indigeneity and overstates the immutability of concepts emanating from existing ‘Western’ disciplines. In doing so, he unnecessarily limits the contributions Indigenous studies is ideally positioned to make in deconstructing Aboriginalist discourses and in doing so produces an oddly parochial formulation of the discipline. Finally, in part three I offer my own prescriptions for an Indigenous studies anchored in Indigenous density (rather than difference). The temporal and epistemological complexity of our relationships with whitestream society means that Indigenous studies must counter hegemonic representations of Indigeneity which marginalise or altogether ignore our density. Following in the footsteps of Geonpul scholar Moreton-Robinson’s path-breaking work, I argue that Indigenous studies’ study of both Indigeneity and whiteness must use all available epistemologies, not just those which apparently distance Western disciplines from Indigenous studies analysis.8 While Champagne’s formulation can possibly be stretched to examine whiteness, the epistemological strategies he proposes for analysing Indigeneity capture only specific, isolated elements of our complexity. The essay ends with a discussion of the implications of this argument. I Locating (Champagne in) the discipline of native studies Native studies ‘state of the discipline’ pieces often begin by differentiating our scholarship from that of longer-standing disciplines.9 Though these are as often prescriptive as reflective of actual practice, such immanent analysis signals a healthy and growing discipline. American Indian scholar Clara Sue Kidwell suggests that, at least in native studies, these debates often play themselves out in a tension between two poles of analysis: essentialism/difference and adaptation/assimilation.10 She suggests that the essentialism cluster is rooted in an extreme form of post-colonialism which ‘implies that American Indian ways of thinking existed before colonialism and remain unknowable by anyone outside those cultures. Native American studies/American Indian studies can recover the long-suppressed values, epistemologies, and voices from colonial oppression’.11 Conversely, adaptation clusters typically emphasise the agency of Indigenous collectivities in the face of whitestream colonialism. Like the essentialism cluster, however, Kidwell argues that in its extreme variant: the idea of adaptation, or acculturation, or agency represents the ultimate disappearance of Indian identity into American society. If Indians dress like everyone else, speak like everyone else, attend public schools, are citizens of the state in which they live and citizens of the United States, how can they justify claims to a distinctive identity?12 Like others taking the essentialist position in the debate,13 Champagne contends that Indigeneity and Indigenous communities are fundamentally different in ways which elide the epistemological premises of Western disciplines (more on this in part two). These disciplines employ data collection concepts and practices saturated with a concern for ‘examining the issues, problems, and conceptualizations that confront American or Western civilization’.14 Indigenous issues are merely positioned as a specific instance of more general patterns of minority oppression.15 Such thinking has, he suggests, detracted intellectual energy from the more laudable Indigenous studies disciplinary goal of ‘conceptuali[s]ing, researching, and explaining patterns of American Indian individual and collective community choices and strategies when confronted with relations with the American state and society’.16 Champagne suggests that most native studies departments are multidisciplinary in character with faculty scattered in numerous disciplines teaching theories and concepts from numerous academic fields, to students as often as not from non-Aboriginal backgrounds, with a vague mandate for increasing or generating broader awareness about Indigenous history and contemporary realities.17 He admits that this multidisciplinarity is often advantageous in that ‘programs could be constructed from long-standing disciplines, and often seasoned scholars could be called upon to provide guidance and support’.18 However, to the extent that concepts central to Western disciplines remain ‘oriented toward examining the issues, problems, and conceptualizations that confront American or Western civilization’,19 these approaches effectively stifle the ability of American Indian studies to produce disciplinarily endogamous theory and methodology. The existing Indigenous studies academic landscape is thus, Champagne explains, littered with disjointed and epistemologically scattered forays into (and about) Indigenous communities. The current inability to produce distinctive theory and method has exacerbated institutional marginality (his context is American but this is readily extrapolated more broadly): fiscal conservativism limits the likelihood that even well-meaning administrators will build-in the solid, permanent funding required for stable Native studies departments (since money made available for ‘Aboriginal issues’ is just as likely to go to more wellregarded disciplines such as anthropology, history or education); broader multicultural or diversity concerns overshadow the distinctiveness of Indigenous experiences by linking them to broader forms of ‘minority’ oppression (thus the seemingly natural fit of native studies departments within ‘ethnic studies’ faculties); and mainstream theorising and methodological thinking has shown a reluctance to ‘think outside the box’ of Western modes of analysis.20 Champagne argues in a nutshell that: the university bureaucratic environment, weak resource support, the emphasis on race and ethnic paradigms over an indigenous paradigm, and the relegation of Indian Studies to serve general diversity interests for the university will continue to constrain, and often will prevent, full development of indigenous studies departments and programs at many universities.21 Champagne’s understanding of native studies’ relationship to the academy is reminiscent of the humanism Foucault critiques in his examination of nineteenth- and twentieth-century sexuality regulation.22 Foucault takes such explanations to task for their tendency to position power repressively as an entity which prevents actions and curtails freedoms. Foucauldian notions of power instead stress its repressive and constitutive character. They emphasise how discursive power shapes the formation of subjectivities which, in turn, shape the conditions under which subjects ‘enter into history’. Wedded to a repressive understanding of power, Champagne makes a homologous correlation between the current academic institutional marginality of Native studies and the forms of marginality Indigenous communities experience outside the academy. Thus correlated, he argues that a robust and holistic Indigenous paradigm can assist in rectifying this repression. For Champagne, then, academic and nonacademic Indigenous knowledge are comrades-in-arms, with Indigenous studies—anchored in an Indigenous paradigm—providing the missing link. In this guise, his Indigenous paradigm places Indigenous communities and nations at its centre, instead of colonial critique. Native studies, Champagne explains, ‘cannot center on a critique of the colonial experience but rather must focus on the individual and community choices American Indians make to realize their culture, values, and political and economic interests within the constraints and opportunities presented by changing colonial contexts’.23 While colonial critique can be useful for examining external forces relating to political, legal and market conditions, it ‘exclude[s] choice and social action on the part of Native historical and cultural experience, and in effect American Indians are not analyzed as players in their own historical contexts but rather viewed as billiard balls knocked around by powerful colonial powers and forces’.24 Champagne thus draws a clear distinction between, on the one hand, what he thinks Western disciplines, with their focus on colonialism, can explain about indigeneity and on the other, what makes Indigenous peoples truly Indigenous and, presumably, what these disciplines remain unable to explicate. Perhaps equally importantly, he assumes that such boundaries are discrete and readily discernable, such that he effectively erases the object–subject relationship within which all other academic disciplines produce knowledge.25 Champagne’s ostensible focus on Indigenous communities reflects a central disciplinary trope of native studies. For example, Cook-Lynn states bluntly that ‘Indian Studies as an academic discipline was meant to have as it constituencies the native tribal nations of America and its major purpose the defense of lands and resources and the sovereign right to nationtonation status’.26 This emphasis on tribally specific knowledge is also emphasised by Muskogee scholar Craig Womack, who argues the need for ‘more attention devoted to tribally specific concerns’ in a literary context,27 part of a larger ‘literary nationalism’ movement with broadly allied concerns.28 Holm et al. argue even more specifically that native studies should emphasise the exploration and support of and for what they term ‘peoplehood’, positioned to include language, sacred history, territory and ceremony,29 while Kidwell suggests that native studies should endeavour to emphasise Indigenous relationships with land, the inclusion of Indigenous intellectual traditions, our inherent sovereignty and the importance of our Indigenous languages.30 Thus, while Champagne’s focal concerns are not abnormal, his attempt to isolate Indigenous communities epistemologically from the broader social fabric of dominant, whitestream society effectively removes a large part of our arsenal for combatting the damaging representations of Indigeneity woven into larger society. Parts of his argument turn on the idea that colonialism exists external to Indigenous communities and nations, as something we are subject to. Thus, it isn’t that we don’t suffer (from) colonialism; rather, its power resides outside our communities. From this perspective, theories of colonialism are explanatory tools but are not enough in-and-of-themselves because their externality precludes their ability to fully comprehend and analyse our communities’ distinctiveness. In line with the repressive formulation of power which anchors his understanding of Indigenous studies, for Champagne colonialism = sameness/assimilation and indigeneity = difference/freedom. I will have more to say on this below, but suffice it to say for now that his prescriptions become particularly problematic when he attempts to circumscribe the theories and methods native studies should use in analysis of/with Indigenous communities. One can perhaps forgive Champagne’s diagnosis in this context, since it represents only part of his argument and, as I said, is a common trope of Indigenous studies. However, consider a fuller example of his positioning of colonialism: Colonial theories emphasize external forces such as political, legal, market, and cultural constraints and hegemonies to which American Indian communities are subject. Colonial arguments are powerful tools and explain much change in American Indian communities, but the kind of change that is explained is externally enforced and often coercive. Such change is often subtly resisted and not internalized. [footnote omitted] An old Spanish saying is ‘I bend my knee but not my heart’.31 While his statements might legitimately swell our hearts with pride at the ways our ancestors resisted colonialism/oppression while retaining their dignity, traditions and collective self consciousness, they nonetheless avoid questions about how the cultural power of nationstates do not merely oppress, but seduce as well.32 Champagne’s essentialism in effect marginalises the complex ways in which our Indigenous habitus (to borrow from Pierre Bourdieu) is inevitably and irrevocably constituted in and by the fields of struggle we occupy.33 His colonialism thus staggers between a vulgar Marxism which stresses an autonomous subject who can/must reject (or accept) colonialism and an equally vulgar structural-functionalism that measures Indigenous agency and collective choices against a Cartesian indigeneity which exists outside the life and reach of contemporary nation-states’ cultural power.

### Humanism Turn---1NC

#### The aff disavows humanism---it should instead be strategically reappropriated, only that can solve a litany of existential threats.

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Today the world seems profoundly broken. Decades of endemic financial crisis and stagnant real wages have produced planetary inequality of such magnitude that eight white men now own the same wealth as the poorest half of the world’s population (Oxfam, 2017). Seemingly nihilistic armed conflicts e

ngulf many regions of world, contributing to a reality in which one in every hundred people on the planet lives as a refugee (Connor and Krogstad, 2016). It is now ninety-five percent likely that temperatures will rise above the two-degree Celsius threshold, making the most dangerous effects of global climate change largely inevitable (Raftery et al., 2017). And this does not even include the success of racist, alt-right, and fascist movements across the United States, Europe, and elsewhere. All this at a time when governments and institutions around the world seem completely ill-equipped to even begin engaging the issues central to human survival.

This brave new world is not only profoundly dispiriting, it poses very serious challenges to those whose academic and political practice involves critically engaging the world with the aim of crafting the theoretical tools – or, as Amílcar Cabral (1979) might suggest, weapons – needed to change it. Today, the academic workbench of concepts, theories, and analysis seems woefully inadequate to honestly stare into the abyss before us, much less provide meaningful guidance for systemic transformation. One reason for the considerable gulf between available theories and present political realities stems from the fact that much of the intellectual tradition structuring the academy today was built alongside imperial or liberal political and historical trajectories. Many of the cherished thinkers we draw upon to construct the contemporary political imaginaries were often coconspirators in the solidification of the European state system and Western imperialism. During the twentieth century, theorists engaged in celebrating a politics of mass demonstration and deliberation, social movements, democratization, and post-Cold War cosmopolitan civil society. The theoretical lessons learned from these historical moments now seem either complicit in, or overly stressed by, the weight of the current pressures. Similarly, many of the political and theoretical apparatuses used to critique this history pale in the face of a historical moment that seems to demand a renewed militancy of purpose, a willingness to take risks for justice, and the urgent need for even more vibrant and vital networks of human solidarity.

It is not surprising, therefore, that within the current conjuncture political thinkers in the Western academy have begun returning to the shelves of the African anticolonial archive (for example: el-Malik and Kamola, 2017; Phạm and Shilliam, 2016; el-Malik, 2016). The twentieth-century struggles against colonialism in Africa, the African diaspora, and around the world, seem to once again speak in instructive and unexpected ways. There is good reason for this return. These voices are poetic yet strident, theoretical but immediately practical to the particularities of struggle. These writings on colonialism, race, class, violence, and governance avoid abstract musing – and the polish and perfection of argument that goes along with it. Instead, they are timely statements made with great urgency. The assumed audience of African anticolonial thought was often not scholars, but rather one’s immediate and intimate comrades. The horizons of these texts and arguments often contain futures filled with possibility, even if the specific outlines are not entirely discernable in the present moment.

Several recent books have argued, in different ways, that returning to thinkers of African anticolonial struggle greatly enriches the theoretical understandings and political struggles of the present. Gary Wilder’s Freedom Time: Negritude, Decolonization, and the Future of the World (2015), Robbie Shilliam’s The Black Pacific: Anti-Colonial Struggles and Oceanic Connections (2015), and Achille Mbembe’s Critique of Black Reason (2017) all make the compelling argument that the ideas, concepts, and modes of argument developed during anticolonial struggles in Africa and by the African diaspora are uniquely suited to help make sense of – and intervene into – the present. Unlike previous debates about ‘African philosophy’ or the popular turn towards ‘comparative’ or ‘global’ political theory, these three authors neither seek to ‘bring’ black and African voices ‘into’ an academic field; nor do they take anticolonial thought as confined to a location, limited to specific set of ‘problems’, or focused exclusively on the aim of national independence. Instead, Wilder, Shilliam, and Mbembe treat the work of anticolonialism as a human inheritance, one that transcends time and space. Wilder, for example, clearly states that he is less interested in ‘provincializ[ing] Europe’ than in working to ‘deprovincialize Africa and the Antilles’ (p. 10). To do so, he tackles the political and intellectual work of Aimé Césaire and Léopold Sédar Senghor in ways that force attention to their broader commitment to articulating a post-national (and post-continental) human politics, as a radical critique of Western modernity rather than the limited plotting of national independence or a black political identity. Similarly, Shilliam foregrounds the epistemic and manifest networks through which the liberatory desires embedded within black power movements and RasTafari spiritual practices circulated among religious, activist, and youth communities in Aotearoa (New Zealand) and beyond. Mbembe also rejects the compartmentalization of ‘Africa’ from the world, demonstrating that the racialized practices and knowledges once used to justify the colonization of Africa have become widely generalized beyond race. The political and epistemic practices that used ‘Black’ and ‘Africa’ as references to concoct racialized categories have become universalized beyond race.

These authors share a commitment to rereading African peoples, practices, and thought – especially as they relate to the refusal of the Western modern and colonial project – as central to understanding the contemporary condition. They contextualize anticolonial thinkers within their specific conjuncture, while taking care not to reduce their arguments to these temporal and spatial contexts. This work short-circuits the all-to-common assumption that the anticolonial project is a finished – or largely failed – project. However, rather than rebutting such accusations, Wilder’s Freedom Time gracefully argues that such claims are only relevant if one assumes that Césaire and Senghor, the two protagonists of his book, were primarily concerned with ending colonial rule within particular geographical spaces. Wilder argues that contemporary readers often miss the fact that these two thinkers understood their complex intellectual and political projects as engaged in a wholesale rebuilding of modern humanity beyond the nation-state. As such, the work of Césaire and Senghor should not be understood through the lens of national independence, but rather read for the not-yet-realized political visions they contain. Wilder writes: ‘Scholarship long promoted one-sided understandings of Césaire and Senghor as either essentialist nativists or naïve humanists…Negritude, whether embraced or criticized, was treated as an affirmative theory of Africanity rather than a critical theory of modernity’ (p. 8). Wilder argues instead that Césaire and Senghor actually reject ‘the doxa that self-determination required state sovereignty’ and instead proceeded from a position that ‘colonial peoples cannot presume to know a priori which political arrangements would best allow them to pursue substantive freedom’ (p. 2). In this way, Césaire and Senghor were intellectuals who lived as complex and fluid thinkers engaged in a ‘pragmatic orientation’ that ‘was inseparable from a utopian commitment to political imagination and anticipatory politics through which they hoped to transcend the very idea of France, remake the world, and inaugurate a new epoch of human history’ (p. 2). This requires understanding Césaire and Senghor as practicing a form of thinking that is simultaneously ‘strategic and principled, gradualist and revolutionary, realist and vision, timely and untimely’ (p. 2).

Wilder’s book alternates chapters between Césaire and Senghor, tracing the evolution, exchange, and collaboration between these two intellectuals, as well as tracing how their ideas evolved over the course of their engagement with party and state politics. Reading these texts as already instantiated within a political terrain makes it possible to grasp their full nuance. For example, in a chapter on Senghor’s African socialism, Wilder writes that Senghor ‘called neither for France to decolonize Africa nor for Africa to liberate itself, but for Africans to decolonize France’ (p. 214). To this end, African socialism was not simply a political platform, or an effort to remake Marxist theory, but rather a way of imagining the world that left open the possibility that Africans were the agents of ‘planetary salvation’ and ‘human emancipation’ (p. 215). This approach helps explain the seemingly quixotic political commitment that Senghor held concerning regional federalism and his insistence on maintaining a fraternal relationship between Senegal and France (two political positions often cited as evidence of his inability to uphold the true promise of national independence). Instead, Wilder suggests that thinking ‘with Césaire and Senghor’ requires us to ‘engag[e] a future that might have been’. While the specific conclusions Césaire and Senghor arrive at might not necessarily ‘be applied to our times’, ‘the problems they identified’ still ‘persist’, and their ‘utopian realist thinking, at once concrete and world-historical, still resonates’ (p. 256).

Shilliam’s book, The Black Pacific, similarly traces connections among anticolonial activists and intellectuals across space and time. However, rather than examining the exchange between Francophone Africa, France, and the Caribbean, Shilliam locates his study in the dense relationships between the Māori and Pasifika peoples of Aotearoa (New Zealand) and the ‘children of Legba’. Legba is a reoccurring figure from African cosmology that mediates the spiritual and physical worlds. Shilliam opens with the story of a 1979 exchange between Māori elders and their guests, a black theater troupe and a RasTafari band visiting Aotearoa NZ from England. The elder, or kaumātua, greeted the visitors, saying: ‘everyone being one people’ to which the theater director replied: ‘the ancestors are meeting because we have met’ here today (p. 1). This exchange reflects Shilliam’s larger argument about the already existing ‘deep, global infrastructure of anti-colonial connectivity’ (p. 3). He contrasts these lived and meaningful connections with the colonial ethnographic mapping practices that sought – and still seek – to firmly establish separation between colonial subjects, with a gaze remained firmly trained on Europe. Shilliam counters by offering a ‘decolonial science of “deep relation”’ (p. 13) that draws out the moments of connectivity between the spiritually synchronistic descendants of Legba, the Pacific Island figure of Tāne/Māui, and the Arcadian Hermes within the Western philosophical tradition. In doing so, Shilliam provides evidence of the profound spiritual bonds that ground relations of strength and connectivity. He argues that, while the ‘manifest world is a broadly (post)colonial one, structured through imperial hierarchies that encourage the one-way transmission of political authority, social relations and knowledge’, there also exists alongside this world vast ‘hinterlands of the spiritual domains’ (p. 20). Legba, Tāne/Māui, and the Arcadian Hermes continually assist in that translation and binding of the manifest and spiritual worlds and, in doing so, they eschew a ‘developmentalist understanding of time’ in favor of one that can account for ‘the reparation of ancestral ties’ (p. 21). Re-grounding anticolonialism in this shared spiritual inheritance emphasizes the dense human connections that, through their cultivation, might inform the healing of colonial wounds. Shilliam demonstrates the durability of these deep relations in chapters examining the movement and adaptation of Black Power in Aotearoa NZ, the embrace of the political concept of blackness among the Māori and Pasifika peoples, the spiritual and cultural circulation between liberation, RasTafari, and indigenous Rātana theologies, and the movement of Māori and Pasifika activists between Ethiopia, South Africa, the Caribbean, and the African diaspora in England.

Unlike Wilder and Shilliam, who locate anticolonial thinking and practice within the expansive spatial, temporal, and spiritual realities of specific individuals, Mbembe’s Critique of Black Reason engages in nothing less than a rewriting of the history of modernity as the ‘mobiliz[ation]’ of ‘Africa and Blackness’ with the goal of ‘the fabrication of racial subjects’ (p. 129). As a ‘river with many tributaries’, Mbembe’s book examines the evolving nature of race and Blackness within a world in which ‘Europe is no longer the center of gravity’ (p. 1). The book moves rapidly and expansively between theoretical engagements – with Fanon, Césaire, Foucault, Arendt, and others – and the historical events that created both modernity and racialized partition (the slave trade, the Haitian and American Revolutions, the Algerian War, and others). He re-casts ‘the biography’ of the ‘assemblage that is Blackness and race’ into ‘three critical moments’: the Atlantic slave trade, the ‘birth of writing’ marked by Blacks demanding ‘the status of full subjects in the world of the living’ (spanning from the Haitian Revolution, abolition, African decolonization, American civil right movement, to the dismantling of apartheid), and concluding with the current period of ‘neoliberalism’ (p. 3). In this latest period, we now inhabit an economic and racial order defined by the ‘industries of the Silicon Valley and digital technology’, in which ‘time passes quickly’, where workers have been replaced by ‘laboring nomads’, and ‘the tragedy of the multitude’ – comprising ‘superfluous humanity’ – has become ‘that they are unable to be exploited at all’ (p. 3). Within this new epoch, race and Blackness have taken on new forms such that the colonial technologies once developed to separate and manage human beings according to racialized categories have now become replaced by a universalized Blackness that extends beyond race: ‘for the first time in human history, the term “Black” has been generalized. This new fungiblity, this solubility, institutionalized as a new norm of existence and expanded to the entire planet, is what I call the Becoming Black of the world’ (p. 6). Islamophobia, for example, operates according to the traditional logics of racism; however, the characteristics once used to describe supposedly biological races has now been applied to ‘“culture” and “religion”’ (p. 7). While Blackness has become universalized beyond race, Mbembe argues that the ‘Western consciousness of Blackness’ – which reduces humans to ‘a racial subject and site of savage exteriority’ – has always existed alongside the ‘Black consciousness of Blackness’, namely the articulation of Blackness within ‘a long history of radicalism, nourished by struggles for abolition and against capitalism’ (pp. 28, 30). Blackness therefore exists within a ‘manifest dualism’, both ‘the living crypt of capital’ through which ‘skin has been transformed into the form and spirit of merchandise’, but simultaneously ‘the symbol of a conscious desire for life, a force springing forth, buoyant and plastic, fully engaged in the act of creation and capable of living in the midst of several times and several histories at once’ (p. 6). Drawing from these ‘reserves of life’, and the awesome refusal to ‘retreat from humanity’ that defines Black life, makes it possible to maintain the ‘possibility of restitution, reparation, and justice’ (p. 179). For Mbembe, whatever our own ‘horizons of…struggle’ might be today, the fundamental struggle remains ‘how to belong fully in this world that is common to all of us, how to pass from the status of the excluded to the status of the right-holder, how to participate in the construction and the distribution of the world’ – that is, the creation of a ‘world in common’ (p. 176).

Taken together, these three books offer insights into the potential benefits of grounding contemporary political and theoretical practices within the contours of African anticolonial thought, widely understood. First, all three are fundamentally concerned with the question of time and temporality. While colonialism is still often studied in a linear fashion – representing a break from a pre-colonial past, and eventually giving way to a post-colonial present (Cooper, 2002, pp. 14–16) – these three authors highlight how emancipatory conceptions of freedom require tarrying with modernist, developmentalist conceptions of time. Mbembe points out, for example, that the ‘remembrance among Blacks depend[s] to a large extent on the critique of time…Time is born out of the contingent, ambiguous, and contradictory relationship that we maintain with things, with the world, or with the body and its doubles’ (p. 121). In Freedom Time, Wilder examines ‘how a given historical epoch many not be identical with itself and historical tenses may blur and interpenetrate’ (p. 15). This attention to time and temporality allows the past to become more malleable and contingent and, thus, the future becomes more open. Wilder highlights this point, situating his book within the ‘postwar opening’ – a historical moment that was fluid, contested, and heterodox, existing between ‘earlier moments of epochal transition’ (i.e., 1790s–1840) and our ‘contemporary conjuncture’ (p. 14).

Second, these three books demand that we examine the relationships between the possible politics, economics, and epistemologies within the academy and those demanded by a still-very-present anticolonial politics. For example, Shilliam reminds us that if we aim for ‘epistemic justice’, then the ‘seedbed of such a decolonial project’ cannot ‘be found in academic discourse but in the living knowledge traditions of colonized peoples’ (p. 7). If one takes this argument seriously then both ‘personal and institutional’ anticolonial practice within the academy requires acknowledging that even our own ‘self-reflexivity’ is not ‘a unique product of modernity’ but rather an ‘institutionally traditional’ form of knowledge, and one that demands that any claim about the ‘superiority of Western academia’ be ‘radically questioned’ (p. 9). Unlike academic, colonial, and Western sciences, ‘decolonial science cultivates knowledge, it does not produce’ knowledge – production is an act of extending the self, while the cultivation of knowledge requires that we ‘till’ in order to ‘turn matter around and fold back on itself so as to rebuild and encourage growth’ (p. 24). Cultivating knowledge involves planting and tending seeds for the unexpected, unknown, and even impossible. The decolonial science of deep relations, therefore, engages in the cultivation of its own ‘biotope’, involving a ‘circulatory’ and ‘constant oxygenation process’, thereby establishing a ‘grounding’ of its own (p. 25).

Finally, these three texts share a common affirmation of a politics of freedom, of solidarity, and interconnectedness that is both extremely fragile yet durable beyond imagination. Wilder, Shilliam, and Mbembe insist that anticolonial thought and practices are already embedded within the present, and remain part of our human inheritance. They also suggest that turning to this body of work makes it possible to understand political freedom and human emancipation as a project that remains radically inclusive, spatially expansive, and temporally heterodox – both already present, rooted in the past, and always on the horizon.

#### The aff’s hunt for a rethinking of thinking comes at the expense of conceptualizing change – that cedes control to the colonizer and reinforces binaries that justified colonialism in the first place. Recognizing the multi-faceted nature of this world allows solidarity to enact a concretely cosmopolitan politics.

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These key terms illuminate crucial aspects of what made Césaire a distinctive thinker whose critical voice may continue to resonate for us today. But in order to attend to Césaire as he did his predecessors—as a contemporary— we should recognize how his intellectual orientation and insights brush against the grain of many current theoretical tendencies. In both critical theory and postcolonial studies, the standard operation is to unmask purportedly universal categories as socially constructed, culturally particular, and implicated in practices, systems, and logics of domination. These are indispensable critical moves. But this approach often devolves into a hunt for traces of universalism or humanism, whether in textual artifacts or political projects, in order to reveal the regressive or oppressive essence of the object. This “aha” moment thus becomes the punch line of the discussion rather than the starting point for analysis. Such fears of complicity with power do not only belie a longing for intellectual and political purity. They also make it difficult to think dialectically, to identify aspects of given arrangements that may point beyond their actually existing forms.

The current insistence on negative critique also makes scholars reluctant to identify desirable alternatives and specify the kind of world they might want to create. But what do we concede if we are unable or unwilling to risk affirming more just, more human, ways of being to which we can say “yes”? It is not easy for radical thinkers to reconcile a nonprescriptive orientation to a radically open future with the imperative to envision more desirable arrangements (Coronil 2011). But ignoring or deferring the challenge does not make it disappear. Following anticolonial thinkers like Césaire, especially those located within the black Atlantic critical tradition, may remind us not to forfeit categories such as freedom, justice, democracy, solidarity, and humanity to the dominant actors who have instrumentalized and degraded them.

Given this dilemma, the attention paid to Vivek Chibber’s recent polemic against subaltern studies is not surprising. Such attention, however, seems to be less about the merits of his universalist Marxism than about a sense of some of the limitations and impasses into which certain currents of postcolonial thinking have led (Chibber 2013).7 Partha Chatterjee himself has recently written, “The task, as it now stands, cannot . . . be taken forward within the framework of the concepts and methods mobilized in Subaltern Studies . . . what is needed are new projects” (2012a: 44). He suggests that such projects should probably focus on “cultural history” and “popular culture” with a renewed focus on visual materials and embodied practices rather than written texts and on ethnography rather than intellectual history. Moreover, he links this invitation to study “the ethnographic, the practical, the everyday and the local” to a focus on subnational “regional formations” and “minority cultures” and languages whose specificities, he observes, had not been sufficiently engaged by earlier subaltern studies research on “India,” “Pakistan,” or “Bangladesh” (47–49). Valuable as such studies would surely be, it is not clear how a renewed focus on locality, with place-based assumptions about territory, consciousness, and categories, could do the kind of critical work necessary to grasp the deep shifts in political logics, structures, and practices that characterize the world-historical present. On the contrary, such approaches risk reproducing precisely the culturalist and territorialist assumptions about political identification and affiliation that need to be rethought in light of contemporary conditions.8

Chatterjee’s surprising emphasis on local ethnography seems consistent with one trend in postcolonial thinking that risks reviving the types of civilizational thinking, and associated assumptions about origins and authenticity, that it had earlier set out to dismantle (Chakrabarty 2007; Mah- mood 2005; Mignolo 2011). Consider the important ways that Talal Asad has invited us to rethink liberal assumptions about “tradition,” with respect to liberal and nonliberal forms of life. In dialogue with Ludwig Wittgenstein and Alasdair MacIntyre, Asad (1986) has developed a powerful critique of liberal secularism—and the secularist logic that subtends many modern liberal states—from the standpoint of embodied and discursive traditions. On the one hand, he reminds us that “Islamic tradition” is neither singular nor unchanging; it is a structured and dynamic space for reasoned argument. On the other hand, he reminds us that despite liberalism’s claims to post- traditional neutrality, it too constitutes a particular tradition (albeit one that defines itself in opposition to inherited, embodied, and practice-oriented forms of tradition-based reasoning).

Asad’s genealogical insights have rightly informed recent critiques of Western liberal ideologies, states, and politics especially regarding their arrogant, condescending, and violent responses to tradition-rooted practices and practitioners, whether outside or inside the West. But his interventions, however unintentionally, have also led scholars to establish dubious chains of equivalence between modernity, the West, and liberalism. Such operations seem to disregard Asad’s important invitation to understand traditions as capacious, heterogeneous, and dynamic spaces of inquiry, disputation, and revision, not simply as a set of rigid behavioral scripts, unchanging cultural formulas, or dogmatic ideological precepts. This reduction of political modernity to a one-dimensional liberalism obscures, for example, the many currents of progressive antiliberalism within the tradition of modern Western political thought. It fails to recognize the significant number of non-European colonial intellectuals engaged in anti-imperial struggles who were active participants in such “traditions within traditions.” It also disregards the contradictions within and redeemable fragments of even liberal political thinking, fragments that, if realized, might point far beyond, and possibly explode, liberalism itself.

To reify modern or Western politics into a static and stereotypical liberalism is to risk practicing an unfortunate form of “Occidentalism” that would reinforce archaic civilizational assumptions about incommensurable and unrelated worlds (and worldviews) and disregard the actual history and open possibilities for practices of cross-cultural solidarity whereby anti-imperial actors outside Europe could enter into dialogue or affiliate with, or even discover ways that they are already situated within, counterhegemonic “Western” political traditions. Critics have rightly mobilized singularity, incommensurability, or untranslatability against liberal attempts to discover an abstract humanity and thereby discount situated and embodied forms of life. But the question is whether we treat incommensurability or untranslatability as an epistemological or political limit or as an always imperfect starting point for practices of dialogue, coordination, affiliation, reciprocity, solidarity. For isn’t the impossibility of full transparency or undifferentiated unity simply the unavoidable condition within which all communication, sociality, and politics must be attempted?9

My point is not to congratulate dissident currents within the West, let alone to recuperate liberalism. It is rather to approach radical and emancipatory politics from a place of not-already-knowing, of not presuming to know a priori which aspects of a tradition are irredeemable, which traditions may become allies or habitations, what the boundaries of (thoroughly plastic) traditions must be. This nondogmatic and experimental orientation to politics, traditions, and concepts is one of the most precious and timely gifts that Césaire may offer to us now. He practiced a concrete cosmopolitan relationship to modern traditions of philosophy, aesthetics, and politics, one that was highly developed by the robust tradition of black Atlantic criticism within which he was firmly rooted along with predecessors (e.g., Toussaint and W. E. B. DuBois), contemporaries (e.g., C. L. R. James, James Baldwin, Suzanne Césaire, Senghor), and descendants (e.g., Fanon, Edouard Glissant, Stuart Hall, Paul Gilroy, Achille Mbembe, David Scott).

Understandable concerns about totalizing explanation and Eurocentric evaluation have led a generation of scholars to insist on the incommensurable alterity of non-European forms of thought. But perhaps we should be concerned less exclusively with unmasking universalisms as covert European particularism than with also challenging the assumption that the universal is European property. I read Césaire not in order to provincialize European concepts but to deprovincialize Antillean thinking. Césaire’s critical reworkings remind us that the supposedly European categories of political modernity properly belong as much to the African and Caribbean actors who coproduced them as to the inhabitants of continental Europe. Similarly, African and Caribbean thinkers, no less than their continental counterparts, produced abstract and general propositions about “humanity,” “history,” and “the world.” In contrast to invocations of multiple modernities, Césaire never granted to Europe possession of a modernity or universality or humanity that was always already translocal and fundamentally Caribbean. He never treated self-determination, emancipation, freedom, equality, or justice as essentially European and foreign. Césaire’s intellectual and political interventions radically challenged reductive territorialist approaches to social thought. He refused to concede that “France” was an ethnic or continental entity, that Martinique was not in some real way internal to “French” society and politics, or that he was situated outside of modern critical traditions. Thus his ongoing and unapologetic engagements with Hegel, Marx, Proudhon, Nietzsche, Lautréamont, Rimbaud, Mallarmé, Bergson, Freud, Breton, Frobenius, and Lenin, alongside his many African, Antillean, and African American interlocutors.

The sonic blurring between “here” and “hear” in the title of this essay is meant to signal not only the contemporaneity of Césaire’s thought for us here now but the imperative that we open ourselves to his presence and recognize his actuality across the epochal divide by hearing what he actually said. This gesture builds on Walter Benjamin’s insight that every now is a “now of recognizability” whereby “what has been comes together in a flash with the now to form a constellation” through which past epochs become newly legible (1999: 462). I also follow Césaire himself, who engaged in dialogue with predecessors as if they were contemporaries and who addressed future interlocutors directly as if they were already present. Like Benjamin, Césaire practiced a form of radical remembrance that connected outmoded pasts to charged presents. This attention to vital histories was bound up with a poetic politics that identified transformative possibilities dwelling within existing arrangements and a proleptic politics that anticipated seemingly impossible futures by trying to enact them concretely in the here and now. But Césaire can only speak to us now if we listen rather than presume to know what someone like him in his situation must have, or should have, been saying.

Until very recently, scholarship on his work has been overdetermined by methodological nationalism (that puzzles over his refusal to pursue state sovereignty), identitarian culturalism (that debates how adequately Césaire expressed Antillean lived experience and whether or not he was an essentialist), and a disciplinary division of labor (that too often splits his poetry, criticism, and politics into separate domains). Generally, Cold War scholarship was shaped by a need to evaluate him in relation to canonical anticolonial nationalists and fit him into a narrative of decolonization-as-national-independence. This has made it difficult to recognize the epochal character, world-making ambition, and global sensibility of his political reflections.

Faced with the promise of decolonization, Césaire conjugated concrete acts with political imagination in ways that displaced conventional oppositions between aesthetics and politics, realism and utopia, pragmatism and principle. Such efforts were animated by what I have been calling radical literalism and utopian realism and which he called inflection and poetic knowledge. He regarded freedom as a problem whose institutional solution was not self-evident and could only be situational. His interventions demonstrated the nonnecessary relationship between colonial emancipation, popular sovereignty, and self-determination, on the one hand, and territorial state sovereignty and national liberation, on the other. He pursued cosmopolitan aims concretely through transcultural practices and by attempting to invent new political forms through which to ground plural and postnational democratic arrangements.

We should recognize that Césaire formulated a critique not of Western civilization from the standpoint of African or Antillean culture but of modern Western racism, imperialism, and capitalism from the standpoint of Antillean and African historical situations and experiences. More generally, it was a critique of an alienated and alienating modernity from the standpoint of embodied and poetic ways of being, knowing, and relating (to self, others, and world). Above all, Césaire recognized residues of, and resources for, more just, human, and integrated ways of living together within Antillean, African, and European texts, traditions, forms, histories, and conditions. In his view, Antilleans—as culturally particular actors, imperial subjects, New World denizens, moderns, and humans—were their rightful heirs. He was concerned less with defining culturally authentic concepts, spaces, and arrangements for Antilleans (apart from Europe or uncontaminated by modernity) than with overcoming imperialism, in solidarity with other struggling peoples, in order to establish less alienated forms of human life globally.

Remembering Césaire’s insistence that modern currents of radicalism were shared legacies and common property may help us to rethink inherited assumptions about the relation between territory, ethnicity, consciousness, and interest (Buck-Morss 2009, 2010). They invite us to deterritorialize social thought and to decolonize intellectual history. This is a matter not of valorizing non-European forms of knowledge, as important as such a move certainly is, but of questioning the presumptive boundaries of “Europe” itself—by recognizing the larger scales on which modern social thought was forged and of appreciating that colonial societies produced self-reflexive thinkers concerned with large-scale processes and future prospects. We can thereby recognize Césaire as a situated postwar thinker of the postwar world, one of whose primary aims was to place into question the very categories “France,” “Europe,” and “the West” by way of an immanent critique of late imperial politics. He envisioned postnational arrangements through which humanity could attempt to overcome the alienating antinomies that had impoverished the quality of life in overseas colonies and European metropoles. His situated humanism and concrete cosmopolitanism should thus be placed in a constellation of modern emancipatory thinking oriented toward worldwide human freedom that included antiracist, anti-imperial, internationalist, and socialist thinkers from a range of traditions: black Atlantic, First Internationalist, global anarchist, Western Marxist, Marxist humanist, Third Worldist.

Césaire believed that the future of humanity depended in some sense on its recovering a lost poetic relation to “the throbbing newness of the world.” Why not regard Césaire’s “humanism made to the measure of the world” as a starting point for our critical thinking about the contemporary situation and the kind of world we would like to create. Césaire, like Toussaint before him, addressed future interlocutors directly. At the same time, his thinking about future possibilities was refracted through dialogue with predecessors like Toussaint. This is how I understand what one of his heirs, Glissant, means by “a prophetic vision of the past” based on “the identification of a painful notion of time and its full projection forward into the future” (1989: 64; see also Glissant 2005: 15, 16). Césaire once wrote of Schoelcher, the socialist republican architect of the 1848 abolition of slavery in France, that it would be “useless to commemorate him if we had not decided to imitate his politics” (1948a: 28). In this spirit I hope that the recent resurgence of interest in Césaire is not only treated as an occasion to honor his memory but is seized as an opportunity to hear his transgenerational address. We can thus think with Césaire about the relation between existing theoretical frameworks, the world we are confronting, and urgent political desires— especially with regard to the history of empire and the role of colonial intellectuals as modern thinkers of global processes.

### Anti-Trust Turn---1NC

#### The disappearance of antitrust law from public discourse has cemented corporate power. A paradigm shift is possible, but requires making monopolies a political issue again, and advocating legal change.

David Dayen 15, author of *Monopolized: Life in the Age of Corporate Power (2020)* and *Chain of Title: How Three Ordinary Americans Uncovered Wall Street's Great Foreclosure Fraud*, “Bring Back Antitrust,” The American Prospect, Vol. 26, No. 4, Fall 2015, lexis.

In 1964, historian Richard Hofstadter gave a speech at the University of California, Berkeley, titled "What Happened to the Antitrust Movement?" He wondered why anti-monopoly sentiment ceased to become the subject of public agitation. "Once the United States had an antitrust movement without antitrust prosecutions," Hofstadter said. "In our time, there have been antitrust prosecutions without an antitrust movement."

Now we have lost both the movement and the prosecutions. When we talk about banks that are too big to fail, we're talking about antitrust. When we talk about the high cost of health care, we're talking about antitrust. So many of our key domestic issues are fundamentally questions about whether we should tolerate monopolies, or dismantle them. But this formulation-a centerpiece of public debate in the last robberbaron era between the 1880s and 1910s-has all but disappeared from popular discourse.

Can anti-monopoly sentiment be revived? When New York's Working Families Party first recruited Zephyr Teachout to run for governor, she said she would only do it if she could talk about monopolies. "They polled it, and they were correct that nobody knew what I was talking about," Teachout says. But when she eventually ran an insurgent campaign against incumbent Andrew Cuomo, she was determined to talk about it anyway.

"The minute you got past the sound-bite level, people responded to the concentration of power," Teachout says. They did campaign events at places where people paid their cable bills, using the pending Comcast-Time Warner merger, eventually abandoned, as the hook. She engaged farmers in upstate New York about monopsony power, and discussed Amazon and big banks on the stump. And it resonated. After only one month of campaigning, Teachout won 35 percent of the vote, with particular strength in upstate counties where farming issues were prominent.

"The Tea Party talks to people and says, 'You're out of power because government is taking it away from you,"' Teachout says. "Far too often, Democrats say, 'You're wrong, you're not out of power.' That's dissonant with our lived experience. You're out of power ... because your priorities don't matter and JPMorgan's do."

Beyond Teachout, you can see through the haze the stirrings of a grassroots antitrust agenda. The greatest anti-monopoly victory of the modern age, the Federal Communications Commission's net-neutrality rules, owed much to a smart, tech-savvy movement that leveraged big protest platforms. Web-native activists fought for the decentralized power of the Internet, without gatekeepers collecting tolls along the way. And they made the connection to things like the Comcast-Time Warner merger, which failed amid public outcry.

"After this existential threat to the Web, you see the same groups becoming interested in the deep history of anti-monopoly laws," Teachout says. "It's kind of an exciting intellectual moment, a fusion between old-school farmers who have been complaining for 30 years and new net-neutrality dreamers."

Monopolists have long used technological advances to consolidate power, from Gilded Age tycoons leveraging control of railroads and telegraphs to Amazon using its first-mover status in e-commerce to squeeze book producers, or Google harvesting traffic to their market-leading search engine to serve ads. It's easy to translate the need for a neutral platform for websites into the same need for book sales or car ride-sharing.

The European Union, in fact, did file formal antitrust charges against Google, accusing it of forcing search engine users into its own shopping platforms, and bundling Android phones with their own apps, to prevent competitors from performing the same functions. The FTC shut down its own investigation into Google over the same concerns in 2013. But an inadvertent disclosure revealed that the agency's Bureau of Competition recommended bringing a lawsuit, arguing that Google's conduct "has resulted-and will result-in real harm to consumers and to innovation in the online search and advertising markets." The political leadership ignored the recommendation.

The next administration must show "leadership that has a certain intellectual curiosity," says Maurice Stucke, pointing to the Google case as a missed opportunity. An alteration in posture would make enforcement far more vigorous, and bringing more cases will give litigators more experience and confidence to negotiate the judicial barriers. The American Antitrust Institute plans to create a transition document for the incoming administration, as they did for the Obama transition.

But at a time of political disempowerment, teaching about the dangers of monopolies and how we have the laws on the books to fight them, and creating upward pressure to do it, offers great potential for a paradigm shift. Connecting Senator Elizabeth Warren's fight against a rigged financial system and Al Franken's fight against media concentration can spark broader political energy.

You could see this potential in Washington, D.C., where in August, the city's Public Service Commission rejected a merger between energy firms Exelon and Pepco, citing "more active participation by parties and interested persons than any other proceeding in the Commission's more than a century of operations." Activists argued a giant Exelon conglomerate would fail to devote resources to the city's clean-energy goals, connecting anti-monopolization with fighting climate change.

There are a lot of reasons for runaway monopolies: an intellectual hijacking by Chicago-school conservative economists, the over-financialization of the economy, a failure of federal antitrust enforcement. But perhaps the biggest reason is that antitrust policy has become divorced from politics, confined to specialized lawyers and mathematicians instead of citizens and activists. Without grassroots momentum, politicians and enforcement agencies can safely ignore the issue. That's the challenge for a small band of academics, think-tank fellows, and activists: to make monopolies a vital issue again, connecting with the severe economic anxiety Americans feel.

#### Legal avenues are key to build up social movements that challenge power.

Kate Andrias and Benjamin I. Sachs 21, Kate Andrias is Professor of Law, University of Michigan Law School. Benjamin I. Sachs is Kestnbaum Professor of Labor and Industry, Harvard Law School, “Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality,” 130 Yale L.J. 546, January 2021, lexis.

[\*548] INTRODUCTION

Among the painful truths made evident by COVID-19 are the deep inequality of American society and the profound inadequacy of our social-welfare infrastructure. The nation's lack of comprehensive health care, 1Link to the text of the noteits underfunded and inefficient system of unemployment insurance, 2Link to the text of the noteand weak workplace safety and health guarantees, 3Link to the text of the notealong with nearly nonexistent paid sick leave, 4Link to the text of the notedebtor-forgiveness rules, 5Link to the text of the noteand tenant protections 6Link to the text of the noteleave poor and working-class communities--particularly communities of color--dangerously exposed to the ravages of this pandemic, both physical and economic. 7Link to the text of the noteAmerica's weak social safety net is, in turn, a product of a profound failure that has plagued American democracy for decades now: the wealthy exercising vastly disproportionate power over politics and government. 8Link to the text of the note

[\*549] Indeed, public faith in American democracy is at near-record lows, and increasing numbers of Americans report that they no longer feel confident in the health of their democratic institutions. When asked why, many say that money has too much of an influence on politics and that politicians are unresponsive to the concerns of regular Americans. 9Link to the text of the noteResearch supports these fears, showing both that wealthy individuals are spending record sums on electoral politics 10Link to the text of the noteand that elected officials are at best only weakly accountable to nonwealthy constituents. 11Link to the text of the note [\*550] As political scientist Martin Gilens has observed, "[W]hen preferences between the well-off and the poor diverge, government policy bears absolutely no relationship to the degree of support or opposition among the poor." 12Link to the text of the note

Of course, democracy does not require that policymaking always follow majority will or the median voter's preferences. But democracy, as well as the faith citizens have in their government, falters when lawmakers persistently disregard the priorities of nonwealthy citizens.

Much of the legal scholarship (and public commentary) concerned with this democracy deficit focuses on the increased flow of money into electoral politics and advocates for stemming that flow. 13Link to the text of the noteScholars writing in this vein criticize the Supreme Court's jurisprudence, exemplified by Citizens United v. FEC, that has enabled unfettered campaign spending. 14Link to the text of the noteThey offer a range of reforms designed to limit the flow of money into elections, many of which would require a change in the composition of the Supreme Court or the ratification of a constitutional amendment. 15Link to the text of the noteA related group of scholars advocates for shielding the legislative and administrative process from money's influence through, for example, lobbying restrictions and disclosure requirements. 16Link to the text of the note

[\*551] A second robust body of scholarship focuses not on insulating the political process from money but on trying to ensure equal rights of individuals to participate in the governance process through elections. These scholars criticize barriers to equal voting rights, including contemporary uses of gerrymandering and legislation that impose hurdles on individual voters' ability to exercise the franchise or minimize the effective voting power of particular constituents. 17Link to the text of the noteScholars urge both doctrinal and legislative reform that would ensure more equal rights of participation.

In the last few years, a third approach has begun to emerge in the legal scholarship. This approach begins by recognizing the difficulty--both practical and constitutional--of keeping money out of politics. It also recognizes that while equal voting and participation rights are critical to the goal of combatting political inequality, they are not enough to ensure political equality in a system where wealth functions so prominently as an independent source of political influence. Thus, this third approach moves beyond campaign finance and individual participation rights and focuses instead on what we will call countervailing power. In particular, this approach is concerned with the ability of mass-membership organizations to equalize the political voice of citizens who lack the political influence that comes from wealth. 18Link to the text of the note

The beneficial effects of countervailing, mass-membership organizations are well known to theorists and researchers of democracy. 19Link to the text of the notePut simply, such groups increase political equality by building and consolidating political power for the [\*552] nonwealthy, thus serving as counterweights to the political influence of the rich. Mass-membership organizations can serve in this capacity because, at bottom, they aggregate the political resources and political power of people who, acting as individuals, are disempowered relative to wealthy individuals and institutions. 20Link to the text of the noteMore particularly, mass-membership organizations enable pooling of politically relevant resources, including money, among individuals with fewsuch resources; they provide information to decisionmakers about ordinary citizens' views; they navigate opaque and fragmented government structures, thereby enabling citizens to monitor government behavior; and they allow citizens to hold decisionmakers accountable. And, in fact, when citizens are organized into mass-membership associations that are active in the political sphere, researchers find an exception to the general rule that policymakers are disproportionally responsive to the preferences and concerns of the wealthy. 21Link to the text of the note

Over recent decades, however, there has been a decline in broad-based, massmembership organizations of low- and middle-income Americans. 22Link to the text of the noteThis decline in countervailing organizations has exacerbated the political distortions caused by the increase in political spending by the wealthy. But the capacity for countervailing organizations to address the distorting effects of wealth raises a critical question for legal scholars: How can law facilitate the construction of countervailing organizations among the nonwealthy? Put differently, how can law facilitate political organizing among Americans whose voices are drowned out by the distorting effects of wealth? That is the question we address in this Article.

Recently, legal scholars have begun to address related topics. For example, K. Sabeel Rahman and Miriam Seifter have written about ways that participation in administrative processes can improve the organizational strength of citizen groups. Thus, Rahman argues for designing administrative processes in ways that enhance the countervailing power of ordinary citizens, 23Link to the text of the notewhile Seifter urges administrative-law scholars to pay attention to the characteristics of interest groups participating in the administrative process and to consider "looking [\*553] within interest groups," referencing the manner by which interest groups determine the views of their constituents, "to illuminate the quality and nature of participation in administrative governance." 24Link to the text of the noteTabatha Abu El-Haj has urged greater use of universal benefits and targeted philanthropy, to encourage the growth of mass-membership organizations, since both "create reasons to organize on the part of beneficiaries." 25Link to the text of the noteBoth of us have written about the countervailing role that labor organizations can play in politics. 26Link to the text of the noteAnd Daryl Levinson and one of us have written about the ways in which ordinary public policy often has the effect--and at times the intent--of mobilizing political organization around the policy. 27Link to the text of the note

Meanwhile, another group of legal scholars has highlighted the importance of social movements and their organizations in legal change, focusing on how movements shape decisionmaking by courts, legislatures, and administrative agencies. 28Link to the text of the noteIn particular, a rich literature has developed on the relationship between popular mobilization and evolving constitutional principles, 29Link to the text of the noteand on [\*554] how "cause lawyers" can best serve social movements. 30Link to the text of the noteMore recently, there has been a resurgence of scholarship that "cogenerates legal meaning alongside left social movements, their organizing, and their visions." 31Link to the text of the noteThis work builds on an older tradition of critical legal studies and critical race theory that interrogates the limits of traditional legal rights in bringing about progressive social change given the political, economic, and social conditions that systematically disadvantage poor people and people of color. 32Link to the text of the note

To date, however, no one has tackled directly the question that we pose here. 33Link to the text of the noteRather than asking how the enactment of substantive legislation or administrative-participation mechanisms might boost organizing, how social [\*555] movements can or hope to reshape law, or how a focus on traditional legal rights disables fundamental social change, we ask how law could be used explicitly and directly to enable low- and middle-income Americans to build their own socialmovement organizations for political power.

The question is particularly urgent today as the COVID-19 pandemic has exacerbated society's existing inequalities. Working-class communities, especially low- and middle-income people of color, have experienced hardships as a result of the disease to a far greater extent than the wealthy--from massive unemployment to dangerous working conditions, from food insecurity to rising debt and risk of eviction. 34Link to the text of the noteThe suffering wrought by the pandemic, as well as by the financial crisis of 2008, has led to an upsurge in protests by low- and middle-income Americans, particularly among workers, tenants, and debtors. 35Link to the text of the noteAt the same time, endemic violence against Black communities, including the recent killing of George Floyd, has led to widespread organizing around issues of racial justice. 36Link to the text of the noteThese movements demand that government respond to the [\*556] concerns of ordinary Americans and attempt to elicit better treatment from powerful actors. Yet, despite their promise, such movements face significant obstacles in translating their members' anger into robust and lasting political power. 37Link to the text of the noteA pressing task, therefore, is to ask how law can facilitate and protect these new and revived protest movements, helping to create durable organizations that can exercise sustained power in the political economy.

We start from the premise that the robustness of countervailing, mass-membership organizations should be understood as a problem both of and for law. The shape of civil society and organizational life is already a product of legal structures and rules. 38Link to the text of the noteAnd although law has frequently been a tool of oppression, rather than of empowerment, of poor and working-class people and movements, 39Link to the text of the notealternative legal regimes that encourage the growth of and the exercise of power by social-movement organizations of the poor and working class are possible. Indeed, for those who are committed to decreasing political inequality, alternative legal structures that encourage the growth of countervailing organizations are imperative.

In analyzing how legal and institutional reforms could facilitate a different picture of organizational and political life in the United States, we draw from the successes and failures of labor law--the area of U.S. law that most explicitly and directly creates a right to collective organization for working people--while also moving beyond that context to literature considering "how, in what forms, and under what conditions social movements become a force for social and political change." 40Link to the text of the noteWe do not attempt to adjudicate priority among factors that [\*557] contribute to successful organizing, nor do we attempt to build an exhaustive list of such factors. Instead, we consolidate factors that have two attributes: (1) they are likely to contribute to the successful building of membership organizations among poor and working-class people, and (2) their existence or development might be enabled by law.

We recognize that some factors, undoubtedly critical to successful organizing, are beyond the reach of our proposal. For example, sociologists and historians have demonstrated that several structural opportunities helped facilitate the growth of the Civil Rights movement, including the collapse of cotton; the increase in Black migration and electoral strength; and the advent of World War II and the Cold War. 41Link to the text of the noteThese kinds of objective structural conditions, exogenous to movements themselves, are frequently important to movement formation, but they cannot be directly affected by the kinds of legal reforms we suggest. Likewise, sociologists have shown that strategic leadership within organizations is critical to movement success, 42Link to the text of the notebut internal leadership dynamics are not easily affected through legal regulation. 43Link to the text of the note

Three additional principles guide our analysis. First, because small-scale, concrete victories are essential to successful organizing, and because organizing tends to be most successful among people with shared identities and existing relationships, we focus on reforms that enable organizing within particular structures of authority and resource relations. By way of examples, we consider organizing among workers, tenants, debtors, and recipients of public benefits. We pick these contexts in part because they are ones rife with exploitation and [\*558] power imbalances and populated by the relevant income groups, and in part because they are home to important organizing efforts, both historical and contemporary. 44Link to the text of the noteWe do not suggest that these are the only relevant contexts in which our suggestions might be explored, nor do we in any sense imply that broader organizational development encompassing poor and working-class people as a whole is impossible or ineffective. In fact, the context-specific organizing regimes we envision might well facilitate broader community-based and political organization. However, we leave for another day exploration of how the law might directly enable broad-based political organization--say, a political organization of all poor people or a political-party system that incentivizes grassroots participation among nonwealthy individuals. 45Link to the text of the note

Second, we focus on how law can build organization, as opposed to more amorphous configurations of insurgency. The organizations our reforms seek to facilitate are very much social-movement actors, in that they seek to change "elements of the social structure and/or reward distribution of a society." 46Link to the text of the noteBut the goal is to encourage enduring organization that can wield sustained, [\*559] countervailing power. 47Link to the text of the noteThus, our approach rejects the idea that formal structures facilitated by law are necessarily deradicalizing and inimical to social change. 48Link to the text of the note

Finally, our focus is on how law can facilitate organizations of working-class and poor Americans--not on either of two other questions: one, how law could be designed specifically to enhance the political power of communities of color, or two, how law could encourage the formation of interest groups generally. The first question could not be more critical. Just as our government is disproportionately responsive to the wealthy, it is also disproportionately responsive to white people, 49Link to the text of the noteand the crisis of structural racism is perhaps the most acute we face as a nation. As such, a program for building political power among communities of color is just as necessary as a program for building power among workers and the poor. But it is also true that our focus on working and poor Americans ought, in practice, and in part due to the crisis of structural racism itself, to amount to a program for building power among and by communities of color. This is not the exclusive reach of our proposals, and continued attention must be paid to ensure that racial inequities do not infect the political organizing we aspire to enable. But because people of color are over-represented in the sectors of the population that we do address--low-income workers, tenants, government-benefits recipients, debtors--these communities would likely benefit from the success of our proposals. As to the second question, while a more expansive civil society may bring a host of benefits, including greater social cohesion and civic education, this Article's concern is with building organizations that can serve as a countervailing force to the extraordinary power of economic elites in our political economy. 50Link to the text of the note

[\*560] We argue that a legal regime designed to enable this kind of organizing should have several components. First, the law should grant collective rights in an explicit and direct way so as to create a "frame" that encourages organizing. Second, as importantly, though more prosaically, the law should provide for a reliable, administrable, and sustainable source of financial, informational, human, and other relevant resources. Third, the law should guarantee free spaces--both physical and digital--in which movement organization can occur, free from surveillance or control. Fourth, the law should remove barriers to participation, both by protecting all those involved from retaliation--no worker may be fired, no tenant evicted, no debtor penalized, and no welfare recipient deprived of benefits because they are active in or supportive of the movement's efforts--and by removing material obstacles that make it difficult for poor and working people to organize. Fifth, the law should provide the organizations with ways to make material change in their members' lives and should create mechanisms for the exercise of real political and economic power, for example by providing the right to "bargain" with the relevant set of private actors and by facilitating organizational participation in governmental processes. Finally, the law should enable contestation and disruption, offering protections for the right to protest and strike. 51Link to the text of the note

The particulars necessarily vary by context. For example, a law designed to generate organizing among tenants would start by affirmatively granting tenants the right to form and join tenant unions. It would grant such unions the right to access information and landlord property for organizational purposes. It would vest the organization with authority to collect dues payments through deductions from rent payments. It would mandate that landlords negotiate with tenants' organizations over rent and housing conditions. It would ensure that organizations have special rights of participation in administrative processes related to housing policy. And it would provide for the right of tenants to engage in rent strikes and protests, free from retaliation. A law designed to facilitate organizing among debtors would similarly create a collective frame, provide a mechanism for funding, protect against retaliation, mandate bargaining and [\*561] rights of participation in governance, and protect the right to protest and strike, but a debtor-organizing law might not provide for access to physical spaces, instead putting more emphasis on providing information and enabling online organizing.

Some of our proposals will generate resistance--theoretical, legal, and political. And, indeed, we concede that our approach has limitations. For example, we do not attempt to articulate the optimal level of political influence that the organizations in question ought to enjoy, nor a way of measuring when and whether they have become sufficiently strong. As Richard Pildes has written in a related context, we believe it is possible to "identify what is troublingly unfair, unequal, or wrong without a precise standard of what is optimally fair, equal, or right." 52Link to the text of the noteIn addition, the scope of our inquiry is limited to problems of economic inequality. Yet we do not mean in any way to minimize other aspects of inequality, including racial and gender discrimination and hierarchy, which are both inseparable from economic inequality and worthy of separate examination and intervention. To that end, we believe law ought to require inclusion and nondiscrimination among poor and working people's social-movement organizations. 53Link to the text of the note

Finally, we recognize both that our recommendations will not provide a panacea to the imbalance in power that characterizes our political economy and that our proposals will be difficult to enact. Indeed, although we suggest a range of possible reforms and explain how they could be achieved, the goal is to illuminate law's constitutive potential and to suggest a path for further work, not to provide a comprehensive blueprint. 54Link to the text of the noteIn short, analysis of what makes poor and working people's social-movement organizations succeed helps show that law [\*562] can make a difference--and that the absence of such law is a choice, one we believe our society cannot afford to make. 55Link to the text of the note

#### Law gave birth to capitalism. Ignoring the legal domain misdiagnoses capital accumulation.

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1 The Code of Capital: Core Themes

I would like to thank the editors of Convivium for putting together this special issue and for inviting me to write a reply to the critiques in this issue. My hope was to write a book about capital that would open fresh perspectives and also engage readers from different disciplinary backgrounds. Having the opportunity to engage scholars from philosophy, law, sociology and business/accounting is a wonderful reward for such an undertaking. Thanks also to the contributors who read the book and put their thoughts and their critiques in writing. In what follows, I will summarize the core themes of my book with only scant reference to their critiques, which I reserve for the reply at the end of this issue.

Capital is not a thing, but a social relation, as Marx taught us (Marx, 1974) according to Marxists, the relation between capital and labor as at the heart of this relation. Ownership over the means of production allows capitalists to extract surplus from labor, which they can feed back into the production and surplus creation process, or take out for consumption. Law figures in this story, but as part of the super-structure, not its basis. Only the “old” institutional economists, foremost among them John Commons, gave law a central role in explaining capitalism (Commons, 1924). This book owes much to their writings and to the legal realists, as it does do social theorists like Karl Polanyi who sought to understand the long arch of historical transformations by observing the details that link societies to markets, social to economic and ultimately political change (Polanyi, 1944).

Capital, I argue in my book, is indeed a social relation, but one that is organized around and mediated by the state and its coercive powers, which have been institutionalized as law. Law is often depicted as a vertical relation between a state and the subject it controls, the people and organizations that occupy its territory. For social and economic activities, there is, however, another dimension of law, namely private law. The distinction between public and private law belongs to the modern period and is more pronounced in some legal systems than in others. It reflects an increasing differentiation of governance tasks and mechanisms for ever more complex social organizations. Several contributors to this issue have criticized this book for not saying enough about public law, a point to which I will return in my reply. For now, suffice to say that the legal domain that in my view has remained largely hidden from view in the discussion of social change, has been private law. It has been naturalized and reified and the fact that it owes its power of social ordering ultimately to the state is often ignored.

Private law consists of legal arrangements that allow private parties to organize their horizontal relations while resting assured that these arrangements will (in all likelihood) be enforceable in a court of law. Private actors may trade, invest, or gamble without this assurance, but they would have to protect themselves against possible breach or interference by strangers to their transactions and the social groups within which they take place. They would have to carefully select and monitor their counterparties or middlemen, wall in their properties, hire private guards, and so forth (Kronman, 1985; Landa, 1981). To be sure, modern technologies have greatly reduced the cost of self-help. As a result, the relative importance of coercive law enforcement (and thus of states) may decline. In the book, I argue that the digital code is unlikely to replace the legal code any time soon; and moreover, that the decisions that digital coders make are not fundamentally different from legal coders. Still, while writing the book, I did not fully grasp the potential of digital coding and of data, an issue I have since taken up (Pistor, 2020a, 2020b).

Setting aside the promises and challenges of the digital code, a critical premise of my argument is that for social relations to scale beyond the size of social groups that can rely on self-monitoring, something else is needed: a powerful agent with the authority to verify the rules that can enforce promises and uphold property rights, if necessary with the help of coercive power (Hodgson, 2009; Weber, 1968). Private law enables private parties to avail themselves of the state’s coercive powers in organizing their social and economic relations well beyond tightly knit spheres of exchange, while enjoying considerable flexibility in doing so. This is key for turning simple objects, promises and ideas or knowhow (or assets) into capital, that is, into assets that create new and secure past wealth. Deciphering the role that private law plays in the making of capital is the book’s core mission.

The basic argument the book makes is fairly simple: With the right legal coding any object, promise or idea can be turned into a capital asset. The process of coding capital bestows its holders with legal attributes that greatly enhance the likelihood that they will produce and secure wealth. I identify four attributes, namely priority, durability, universality, and convertibility. Priority means that some asset holders enjoy stronger rights than others; these rights can be extended in time by protecting them against other claims, thereby lending them durability and allowing capital to grow. Holders of financial asset attain durability by way of convertibility, an option to swap privately into state issued legal tender that maintains its nominal value (Ricks, 2016), and thereby to lock in past gains. Last but not least, universality ensures that all have to yield to these legal rights, whether or not they knew about them. Coding capital then is the process of grafting priority, durability or convertibility, and universality on to different types of assets and thereby creating wealth for their holders and inequality for the rest.

Only a handful of institutions of private law are needed to turn a simple asset into capital. For priority, property and collateral law do most of the work; and for durability, trust and corporate law. Bankruptcy is in the mix, because, even though it is mandatory and as such less malleable, it sanctions priority rights that were created outside bankruptcy. Owners of assets that are in the possession of a defaulting debtor can retrieve them, and holders of collateral interests can enforce against them before any other creditors. Claimants at the end of the queue get only the leftovers. The legal modules that confer priority and durability operate by design against anybody; in contrast, contract law is a legal relationship that binds only two parties to the contract. Still, contract law occupies an important role in the coding of capital, because contractual relations enjoy legal protection against outside interference. Moreover, with the help of information technology, the costs of contracting can be reduced to a point that contractual relations can be universalized – simply by requiring millions of platform users to click “agree” and thereby sign on to the same contract that bind everybody else. To be clear, these six modules are not the only legal devices that can be used for coding capital, but they have been central for coding of capital over the past four hundred years or so. The book applies this framework to the coding of land, firms, debt, and knowhow. While land came first, the story unfolds not in chronological order. In other words, there is no explicit or implied argument about historical stages of the coding of capital.

To me, one of the most striking discoveries was the persistence and versatility of the modules of the code. Property rights, as Bernard Rudden reminds us, first emerged during the age of feudalism (Rudden, 1994). The same legal modules, property rights, collateral as well as trust law, which were used to code land are used today for coding securitized assets and complex financial derivative structures. The legal modules are not entirely static; they were adapted to changing circumstances. Property rights in land evolved from an integral part of the feudal socio-political order into a legal right held by individuals in principle irrespective of their social status. I say “in principle”, because endowment effects limited access to land and other assets long after legal restrictions had been lifted and gave the privileged landowners a head-start over everyone else. The importance of land as the primary source of wealth prior to the onset of industrialization, and indeed of capitalism, is also evident in the evolution of trust last. Well into the nineteenth century, land was the only asset that could be conveyed to a trust, with sovereign debt and shares in the English East Indian Company allowed only later. Today, virtually anything that can generate future cash flows can be thrown behind the veil of a trust thereby granting investors (the beneficiaries) privileged access to these cash flows. In addition, the fiduciary duties of trustees have been relaxed, leading one student of trust law to talk of the “stripping of the trust” (Hofri-Winogradow, 2015), and beneficiaries have turned their equitable interests against the trust into fixed income claims.

These modifications notwithstanding, I stress continuity of the legal modules over change, because their basic structure remained intact even as they were adapted to new assets and changing circumstances. Still, there might room for another book that tells the story of each module over time, and preferably, in comparative perspective. In fact, I first thought about organizing the book around the legal institutions (property, trust, corporate law etc.), rather than the assets (land, firms, debt, knowhow) they have coded as capital. It might have been a great book for legal historians, but probably would have not conveyed the power of the legal code and its impact on the creation of wealth and inequality for a broader readership. Yet, analyzing the patterns of legal change in greater detail will be an important aspect for further deepening the theoretical analysis and drawing out the implications of “The Code of Capital” for social and political theory (more on this in the reply).

Placing private law at the center of the analysis seems to disregard the rise of global capitalism. Private law is domestic law; only some aspects of private have been harmonized globally. Even the EU, which had aspired to creating a comprehensives set of common rules for a common market, eventually switched direction. In lieu of a common set of substantive rules, say for contract, corporate law, etc., member states have harmonized the rules that determine which country’s rules should apply in cross-border cases where more than one legal system is in play. In legal jargon, these are the “conflict-of-law rules” (or international private law), which are part of the domestic legal orders of every country. These rules stipulate separately for every legal domain the factors that should determine whose law applies: the location of an asset for property rights, a company’s headquarters or place of incorporation for corporate law, or simply party choice for contract law – and increasingly for other areas of the law as well.

They may look arcane or unassuming, but these rules have been instrumental for the integration of economic and financial systems globally. In the absence of a global state and a global law, conflict-of-law rules have been used to extend the reach of domestic law beyond the territorial borders of the states from which it originated. Creating a menu of legal systems for private agents to choose from when organizing their transnational relations required at least two things: Different rules with some legal systems offering greater advantages for the coding of capital than others; and the willingness of states with less desirable rules to enforce the selected rules within their territories. The first condition is easy to meet, as legal rules do in fact vary across countries and legal system. More interestingly, they do so fairly systematically, with the common law offering for the most part superior conditions than do most civil law systems. Comparing civil law and common law regimes has a long trajectory, including more recently the law and finance literature (La Porta, Lopez-de-Silanes, Shleifer, & Vishny, 1998). I don’t add much to this debate other than suggesting that the organization of the legal profession, the role of private attorneys and courts in the legal system, has not received the attention it deserves.

The second condition, i.e. other states willing to enforce foreign law in their courts, requires a bit more explanation. Here, we have seen a shift over the past several decades towards allowing private parties to freely choose the law from among different legal systems that best suits their needs. Some states did so on their own behest; others were pushed by economic and legal integration projects, such as the European Union. Either way, the timing is conspicuous: it overlaps with the integration of financial markets globally since the late 1980s and early 1990s. Teasing out the interaction between decisions to remove capital controls, to privatize financial intermediaries and allow for the free movement of capital and changes in conflict-of-law rules certainly deserve further research.

When using the lens of the code of capital, global capitalism does not appear as some “supra-national” system that is detached from states or state law or that has diminished the role of states. Instead, global capitalism is rooted in select legal systems that have accommodated capital for centuries and that today are home to the major players in global finance, as well as the 100 top global law firms. English law has dominated international trade for centuries, with the direction of causality possible running from empire to legal dominance, but equally possible in the opposite direction. Today, English and New York state law dominate the coding of financial capital that is traded globally. These two jurisdictions are the rule makers for global capital. Most other jurisdictions will recognize and enforce the legal rights they create; they are rule takers. By recognizing and enforcing foreign law in their courts, they extend universality way beyond the territory of the country to provide the critical modules of the code.

Capital and the system to which it has given its name was not designed by anybody in a coherent fashion, but neither can it be described as the product of natural evolution. To turn a simple object, promise or idea into capital, somebody must decide, which and whose assets shall be coded as capital; others must accept the coding, even yield to it. And should the coding be challenged, someone must decide, whether a strategy should be upheld, struck down, or changed. These tasks are taken up by different agents: asset holders, lawyers, courts, regulators, and legislatures; and not just agents that all belong to the same state, but are dispersed among several. The de-centering and diffusion of state power through private law and conflict-of-law rules, the book suggests, is critical for understanding a system that is at once built from state law and difficult to constrain through collective governance mechanisms of states. This might help explain, why there is no simple reform strategy. In the book, I therefore propose a strategy of incremental change aimed at scaling back the mechanism that have contributed to the diffusion of state power and their concentration in private hands. To several critics this strategy is unsatisfactory. I don’t disagree and my own thinking has evolved since the book went to press, especially since the economic fallout from COVID-19 pandemic, which might create an opportunity for more radical change. Still, the measures I discuss in the book are in my mind and indispensable for creating the needed space for retooling state power.