# 2AC

## Case

#### Begs the question of what our political commitments should be oriented towards – aff is a radical change to the status quo oriented towards challenging political elites

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Amna A. Akbar, “Demands for a Democratic Political Economy,” *Harvard Law Review Forum*, vol. 134, 2020, pp. 98-106, https://harvardlawreview.org/wp-content/uploads/2020/12/134-Harv.-L.-Rev.-F.-90.pdf.

I. NON-REFORMIST REFORMS

As a matter of rhetoric, the left often fashions itself as against reform and outside of formal politics -- characterizations that liberals and scholars echo. 51But today's left social movements are turning to demands, reforms, and policy platforms. 52This is not a rejection of electoral and legislative politics: it is a cautious embrace, marking a shift for the emergent left. The demands are amplified by an increasingly organized strategy to elect left and socialist candidates to office, to challenge the Democratic Party's ties to corporate money and the billionaire class, and to redefine the realm of the possible. 53Congressional Representatives Alexandria Ocasio-Cortez, Ilhan Omar, and the growing Squad are supported by a developing constellation of organizations focused on electoral strategy -- and these elected officials have become important amplifiers for radical demands. 54The turn to reform undoubtedly reflects the defeat of the revolutionary politics of the New Left and Black Power era -- itself an index of frustration with what the civil rights movement achieved 55-- as well as a recognition of the immensity of U.S. military and police power that rose up to crush movements here and around the world. 56But it also reflects a sober assessment of the limited scale of left, working-class, and poor people power amid decades of state repression and the rise of the neoliberal agenda Klarman documents. 57It is a bid for power that recognizes that mass disenfranchisement is central to the elite's hold on the state and the economy. A growing number of organizers now understand the need to organize poor, working-class, Black, brown, and immigrant people to effectuate transformational change. 58

Reform has long been a central question in debates about left and socialist strategy, 59with a range of terms to capture the aspiration for a reform program aimed at a larger project of transformation. 60Organizers are increasingly invoking non-reformist reforms, the term coined in the 1960s by French economist-philosopher and socialist André Gorz. 61In Strategy for Labor, Gorz defined a non-reformist reform as one that does not comport with "capitalist needs, criteria, and rationales." 62Instead it advances a logic of "what should be" and requires "implementation of fundamental political and economic changes." 63Whether the change is "sudden" or "gradual" is immaterial: non-reformist reforms require a "modification of the relations of power," in particular "the creation of new centers of democratic power." 64

The non-reformist reform framework is prevalent in abolitionist organizing against the prison industrial complex 65and deployed by those who embrace racial justice, anticapitalism, and socialism more broadly. 66In Golden Gulag, Professor Ruth Wilson Gilmore calls for non-reformist reforms, which she defines as "changes that, at the end of the day, unravel rather than widen the net of social control through criminalization." 67Through decades of campaigns against carceral infrastructure, abolitionist campaigns have produced rubrics demarcating an approach to reform focused on reducing the scale, power, tools, and legitimacy of the carceral state. 68The focus on the ideological scaffolding of carceral control -- the equation of policing with safety, for example -- signals a keen understanding of the interlocking ideological and material infrastructure of our lives. 69In turn, it suggests, like Gorz did, that a revolutionary program of reform must continually deepen consciousness around the violence and exploitation of the status quo as it advances the possibility of alternatives.

While Gorz is remembered as a champion for non-reformist reforms, his work is decidedly ambivalent: a "very clear dividing line" will not always exist between "reformist" and "non-reformist reforms." 70Assessing a demand for "the construction of 500,000 new housing units a year," for example, would require an assessment of whether the proposal involved "the expropriation of those who own the required land, and whether the construction would be a socialized public service, thus destroying an important center of the accumulation of private capital; or if, on the contrary, this would mean subsidizing private enterprise with taxpayers' money to guarantee its profits." 71The non-reformist reform does not aim to create policy solutions to discrete problems; rather it aims to unleash people power against the prevailing political, economic, and social arrangements and toward new possibilities.

But whether something is non-reformist or reformist is about more than the nature of the demand and its particulars: it is also a question of how the campaign is waged. Consider another example: abolition of the death penalty. The conventional liberal approach emphasizes that death is too great a power for the state, and reassures the public that life sentences will continue to ensure safety of local communities. In this guise, the campaign aims to shrink the state's carceral power in one particular way but does not question mass human caging. As the campaign attempts to undermine the death penalty, its logic shores up the legitimacy, righteousness, and necessity of life sentences. 72A non-reformist approach would frame the problem of the death penalty as stemming from the larger violence of prisons and policing and its historical continuities with lynching and enslavement. Life without parole then is not the solution, it is illegitimate carceral violence: what abolitionist organizers in Pennsylvania have dubbed "death by incarceration." 73

If the same demand can be framed or implemented in reformist or non-reformist ways, the line is undoubtedly murky in practice. But this does not make the attempt to distinguish futile. Instead it clarifies that reform projects are contradictory gambits if the aim is transformation: they always have the possibility of reifying the status quo. Nonetheless, there are essential distinctions for developing transformative programs of reform that aim to undermine the prevailing order in service of building a new one.

The hallmarks of non-reformist reforms are three. First, non-reformist reforms advance a radical critique and radical imagination. 74Reform is not the end goal; transformation is. 75Non-reformist reforms are "conceived not in terms of what is possible within the framework of a given system and administration, but in view of what should be made possible in terms of human needs and demands." 76In advancing an agenda to meet human need, non-reformist reforms advance a critique about how capitalism and the carceral state structure society for the benefit of the few, rather than the many. They also posit a radical imagination for a state or society oriented toward meeting those needs.

By contrast, reformist reforms draw on and advance critiques of our system -- whether that be capitalism or the carceral state -- that do not question underlying premises or advance alternative futures. In fact, reformist reforms "reject[] those objectives and demands -- however deep the need for them -- which are incompatible with the preservation of the system." 77Here, one can think of the quick rejections by so many of defund the police or the Green New Deal -- despite the mounting evidence that liberal reforms have done little to limit police violence or to slow the speed at which we are hurtling toward increasingly frequent environmental disasters. 78Liberal reformism effectively shields the status quo from deep critique. 79The end goal of liberal reformism is just that: reform.

The non-reformist reform then provides a framework for demands that will undermine the prevailing political, economic, social system from reproducing itself and make more possible a radically different political, economic, social system. For abolitionists, the underlying system to undermine is the prison industrial complex and the horizon to build toward is abolition democracy. For socialists, the underlying system is capitalism and the horizon socialism. In theory and practice, these are intertwined, variegated, and debated political projects. 80

I am suggesting neither a false neatness within nor artificial distinctions between rich left traditions. But I mention it to make a point so obscured in legal discourse: that approaches to reform reflect ideological commitments, critiques of or acquiescence to underlying systems, aspirations for the future, and theories of change. Reforms communicate analyses of our conditions, tell stories about possibilities, and contribute to dynamic relations of power. So the target and object of the non-reformist framework will depend on one's political project and analysis, as will whether one accepts a reformist or non-reformist orientation.

Whereas reformist reforms aim to improve, ameliorate, legitimate, and even advance the underlying system, 81non-reformist reforms aim for political, economic, social transformation: for example, socialism or abolition democracy. They seek to delegitimate the underlying system in service of building new forms of social organization. Rather than relegitimate, they seek to sustain ideological crisis as a way to provoke action and develop public consciousness about the possibilities of alternatives and our collective capacity to build them together.

Second, non-reformist reforms must draw from and create pathways for building ever-growing organized popular power. 82They aim to shift power away from elites and toward the masses of people. This is a matter of substance and process, from where the demand comes, the vision it advances, and the space it creates. Whether through demands on the state or the workplace, non-reformist reform " always requires the creation of new centers of democratic power[,] . . . a restriction on the powers of State or Capital, an extension of popular power, that is to say, a victory of democracy over the dictatorship of profit." 83In their focus on power, non-reformist reforms challenge liberal legal frameworks that tend to obscure power relations. 84Non-reformist reforms are about building the power of people to wage a long-term struggle of transformation.

In contrast to reforms formulated by expert elites, non-reformist reforms come from social movements, labor, and organized collectives of poor, working-class, and directly impacted people making demands for power over the conditions of their lives and the shape of their institutions. 85People living under perilous conditions must generate analysis of those conditions, and advance solutions, in collective formations. 86 Collective processes -- whether in organizations, unions, or assemblies -- become schools of democratic governance in action: processes of enfranchisement and exercises in self-determination that build power and motivate further action. 87

Third, non-reformist reforms are about the dialectic between radical ideation and power building. Non-reformist reforms come from contestatory exercises of popular power. 88They attempt to expand organized collective power to build pathways for transformation. As such, they are not in themselves about finding an answer to a policy problem: They are centrally about an exercise of power by people over the conditions of their own lives. They aim to create "a vast extension of democratic participation in all areas of civic life -- amounting to a very considerable transformation of the character of the state and of existing bourgeois democratic forms." 89

Because the end goal is building power rather than identifying a policy fix, non-reformist reforms can only be effective when pursued in relation to a broader array of strategies and tactics for political, economic, social transformation. That includes protests and strikes as well as political education, mutual aid, organizing, and the building of alternative institutions.

Along with other strategies and tactics, reforms are in dialectical relationship with transformation: deepening consciousness, building independent power and membership, and expanding demands. 90As Gorz put it, reforms have to be imagined as part of a longer-term "strategy of progressive conquest of power by the workers." 91

## K

#### Perm – do both – we should grapple with the impossibility of black being even as we commit ourselves to a new social order – that’s best –afropessimism is a useful analytic to understand the past, NOT a proscription of any revolutionary action

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Jared Sexton, “Affirmation in the Dark: Racial Slavery and Philosophical Pessimism,” *The Compartist*, vol. 43, October 2019, pp. 104-107, https://www.jstor.org/stable/pdf/26824949.pdf?refreqid=excelsior%3A9b1e69cfc2fb6790c32d8bcf4957837e.

Of course, any arguments for redemption are untenable at best and this has been a point of major public contention vis-à-vis afro-pessimism from the beginning: whether and when and how and to what extent some corner of the world is now, always has been, or could in the future be redeemed in and for black existence. But an afro-pessimist response to the failure of such arguments need not preserve their categories by declaring the world irredeemable instead. Perhaps, as a first move, yes, in the name of polemical response, and if that is the thrust of Ontological Terror then it should be judged a success. However, there is an indiscernible something beyond that curious judgment, something beyond judgment as such, that is only indicated by Warren’s counsel in pursuit of “a phenomenology of black spirit” (171).9 What will become a more fulsome appeal to shift attention from the (pessimistic) political ontology of anti-blackness to the (optimistic) mysticism of black spirit contains within it something that is not so much “situated at the limit of deconstruction and Destruktion—blackness as the ‘undeconstructable’ core of ontometaphysics” (180 n. 8) as it is immanent to both.

When Warren describes “black being as spacing,” he is on the track of something that he lets loose in the next sentence: “For Derrida, this spacing constitutes nothing itself. Spacing [as the gap in between established properties] ruptures the metaphysics of presence and being, since it is a formlessness that preconditions the structure itself (grammar, language, semiotics). [. . .] This spacing is the nothing of metaphysics” (196 n. 22). So far so good, but the sentence hiding in the ellipsis reads: “In this way, emancipation is a spacing of blackness.” This statement functions in context as shorthand for the critique of emancipation as false exit to freedom. Yet, this slippage, not unlike the treatment of drive above, between blackness as spacing and the spacing of blackness is telling. It reads to me as both a conceptual ambiguity and an affective ambivalence. The ambiguity relates to whether blackness is substantive, like a body, or differing and deferring, like nothing. The ambivalence relates to whether black people, or those who come to embody a negatively projected blackness, can do anything to resolve the matter. Can and should: I add the ought imperative here despite its foreclosure in an antiblack world, even for people designated black, because it weighs down upon the text like a heavy mist, condensing around the guiding question: “How is it going with black being?”

Perhaps what I am suggesting constitutes an ontological revolution, one that will destroy the world and its institutions (i.e., the “end of the world,” as Fanon calls it). But these are our options, since the metaphysical holocaust will continue as long as the world exists. The nihilistic revelation, however, is that such a revolution will destroy all life—far from the freedom dreams of the political idealists or the sobriety of the pragmatist. (171)

While rightly identifying the task before us as “the imagination of black existence without Being,”10 which is to say existence without the prospect of becoming legible as beings (whatever the conventional desire to do so), Warren then steps beyond the afro-pessimist refusal of prescription and prognosis. Wilderson ends Red, White, and Black with this précis: “To say we must be free of air, while admitting to knowing no other source of breath, is what I have tried to do here” (338). Warren, by contrast, would invite us to adopt a disposition: endurance. To endure means to remain in existence, of course, but it also means to suffer patiently, a subsidiary prescription that would seem orthogonal to the urgency, and occasionally the haste, that otherwise animates the text. Moreover, the apocalyptic revolutionary forecast seems not only overstated, but also overwrought. Human life is not all life, and the world is not the earth. All of existence is finite, whether it is living or nonliving, human or nonhuman, but imagining it without Being does not require imagining it destroyed. It entails imagining it in and as the ruins of Being, after the end of the world, in an entirely other relation to the nothing from whence it comes.

And herein we find something of the spacing between afro-pessimism and black nihilism: not at the level of analysis or conclusion or even implication, but rather at the level of opening and closing gesture. When faced with an antiblack world, do you call it eternally fallen because within it you are damned? And do you endure it as such, in pursuit of black spirit, waiting out an earthly purgatory, cleansing yourself of the sins of a (futile) desire for Being? Or does a world-destroying black thinking not allow for some other understanding of damnation? Alas, there are resources older and more incendiary than any memory, individual or collective. You can lose yourself and your damnation in the same unending, sinking feeling.11

5.

A statement on revolution need not be a revolutionary statement, if any such thing could exist. We might write about things to which our writing makes no direct contribution to inventing or advancing. There’s a good chance of this, after all, living as we are in the surreal space-time of an anti-black world, marked by the intense, irrational, hallucinatory reality of a dream. Thinking of afro-pessimism in relation to revolutionary praxis is tough talk, talk tough to conjure up, not least because praxis conventionally understood is “the process by which a theory . . . is enacted, embodied, or realized” in the storied dialectic of thinking and doing, and afropessimism is a theory, or a theoretical orientation or sensibility, that is fundamentally, and for some frustratingly or even frighteningly, non-prescriptive—it refuses to proffer any guidance, much less any guarantees; there are within its ambit no rules of engagement, no method or technique, no strategy or tactics.

Afro-pessimism causes trouble for us instead, dashing a certain hope for the future or trust in the past, questioning the ground of established political authority and the received wisdom of social movements and fighting formations alike, upending the pieties of faith and flouting the proprieties of coalition, whether intra- or extra-mural. Afro-pessimism-in-practice, or a practical or practiced afro-pessimism, may seem a contradiction in terms; afro-pessimism, it seems, is necessary to think with and impossible to do. You can only do something about it. It doesn’t matter really, since the praxis, the theory-informed practice, is happening anyway, all around us, all about us. We just don’t know anything about it, and as soon as we make the attempt to produce such knowledge, it slips our grasp, despite our best intentions. And speaking of our best intentions, what are they anyway? Are they to be distinguished from our best efforts, or our best effects? Are they related at all to our best interests? We address ourselves to all of these ideas and more, we draw on them explicitly or implicitly, every time we venture forth to educate, agitate, and organize.

#### Net benefit is action to solve extinction – it outweighs

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(Anthony, Stefanie Fishel is Assistant Professor, Department of Gender and Race Studies at the University of Alabama, Audra Mitchell is CIGI Chair in Global Governance and Ethics at the Balsillie School of International Affairs, Simon Dalby is CIGI Chair in the Political Economy of Climate Change at the Balsillie School of International Affairs, and, Daniel J. Levine is Assistant Professor of Political Science at the University of Alabama, “Planet Politics: Manifesto from the End of IR,” Millennium: Journal of International Studies 1–25)

8. Global ethics must respond to mass extinction. In late 2014, the Worldwide Fund for Nature reported a startling statistic: according to their global study, 52% of species had gone extinct between 1970 and 2010.60 This is not news: for three decades, conservation biologists have been warning of a ‘sixth mass extinction’, which, by definition, could eliminate more than three quarters of currently existing life forms in just a few centuries.61 In other words, it could threaten the practical possibility of the survival of earthly life. Mass extinction is not simply extinction (or death) writ large: it is a qualitatively different phenomena that demands its own ethical categories. It cannot be grasped by aggregating species extinctions, let alone the deaths of individual organisms. Not only does it erase diverse, irreplaceable life forms, their unique histories and open-ended possibilities, but it threatens the ontological conditions of Earthly life.

IR is one of few disciplines that is explicitly devoted to the pursuit of survival, yet it has almost nothing to say in the face of a possible mass extinction event.62 It utterly lacks the conceptual and ethical frameworks necessary to foster diverse, meaningful responses to this phenomenon. As mentioned above, Cold-War era concepts such as ‘nuclear winter’ and ‘omnicide’ gesture towards harms massive in their scale and moral horror. However, they are asymptotic: they imagine nightmares of a severely denuded planet, yet they do not contemplate the comprehensive negation that a mass extinction event entails. In contemporary IR discourses, where it appears at all, extinction is treated as a problem of scientific management and biopolitical control aimed at securing existing human lifestyles.63 Once again, this approach fails to recognise the reality of extinction, which is a matter of being and nonbeing, not one of life and death processes.

Confronting the enormity of a possible mass extinction event requires a total overhaul of human perceptions of what is at stake in the disruption of the conditions of Earthly life. The question of what is ‘lost’ in extinction has, since the inception of the concept of ‘conservation’, been addressed in terms of financial cost and economic liabilities.64 Beyond reducing life to forms to capital, currencies and financial instruments, the dominant neoliberal political economy of conservation imposes a homogenising, Western secular worldview on a planetary phenomenon. Yet the enormity, complexity, and scale of mass extinction is so huge that humans need to draw on every possible resource in order to find ways of responding. This means that they need to mobilise multiple worldviews and lifeways – including those emerging from indigenous and marginalised cosmologies. Above all, it is crucial and urgent to realise that extinction is a matter of global ethics. It is not simply an issue of management or security, or even of particular visions of the good life. Instead, it is about staking a claim as to the goodness of life itself. If it does not fit within the existing parameters of global ethics, then it is these boundaries that need to change.

9. An Earth-worldly politics. Humans are worldly – that is, we are fundamentally worldforming and embedded in multiple worlds that traverse the Earth. However, the Earth is not ‘our’ world, as the grand theories of IR, and some accounts of the Anthropocene have it – an object and possession to be appropriated, circumnavigated, instrumentalised and englobed.65 Rather, it is a complex of worlds that we share, co-constitute, create, destroy and inhabit with countless other life forms and beings.

The formation of the Anthropocene reflects a particular type of worlding, one in which the Earth is treated as raw material for the creation of a world tailored to human needs. Heidegger famously framed ‘earth’ and ‘world’ as two countervailing, conflicting forces that constrain and shape one another. We contend that existing political, economic and social conditions have pushed human worlding so far to one extreme that it has become almost entirely detached from the conditions of the Earth. Planet Politics calls, instead, for a mode of worlding that is responsive to, and grounded in, the Earth. One of these ways of being Earth-worldly is to embrace the condition of being entangled. We can interpret this term in the way that Heidegger66 did, as the condition of being mired in everyday human concerns, worries, and anxiety, to prolong existence. But, in contrast, we can and should reframe it as authors like Karen Barad67 and Donna Haraway68 have done. To them and many others, ‘entanglement’ is a radical, indeed fundamental condition of being-with, or, as Jean-Luc Nancy puts it, ‘being singular plural’.69 This means that no being is truly autonomous or separate, whether at the scale of international politics or of quantum physics. World itself is singular plural: what humans tend to refer to as ‘the’ world is actually a multiplicity of worlds at various scales that intersect, overlap, conflict, emerge as they surge across the Earth. World emerges from the poetics of existence, the collision of energy and matter, the tumult of agencies, the fusion and diffusion of bonds.

Worlds erupt from, and consist in, the intersection of diverse forms of being – material and intangible, organic and inorganic, ‘living’ and ‘nonliving’. Because of the tumultuousness of the Earth with which they are entangled, ‘worlds’ are not static, rigid or permanent. They are permeable and fluid. They can be created, modified – and, of course, destroyed. Concepts of violence, harm and (in)security that focus only on humans ignore at their peril the destruction and severance of worlds,70 which undermines the conditions of plurality that enables life on Earth to thrive.

#### Antiblackness is a constructed social project – they conflate the existence of racism with its inevitability

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Lewis Gordon, “5: Thoughts on Afropessimism,” *Freedom, Justice, and Decolonization*, Routledge 2021, pp. 75.

The first is that “an antiblack world” is not identical with “the world is antiblack.” The latter is an antiblack racist project. It is not the historical achievement of such. Its limitations emerge from a basic fact. Black people and other opponents of such an enterprise fought, and continue to fight, against it. The same argument applies to the argument about social death. Such an achievement would have rendered even those authors’ and the reflections I am offering here stillborn. The basic premises of the antiblack world and social death arguments are, then, locked in performative contradictions. They fail at the moment they are articulated. Yet, they have rhetorical force. This is evident through the continued growth of its proponents, literature, and forums devoted to it, in which all lay claim to stillborn status.

#### Political commitments are an ethical imperative – it is impossible to tell in advance whether we will succeed or fail, but refusing to act at all is disastrous

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Lewis Gordon, “2: Re-Imagining Liberations,” *Freedom, Justice, and Decolonization*, Routledge 2021, pp. 29.

Concluding Considerations

A crucial feature of political commitment is that it is an existential paradox. Unlike moral commitment, which involves doing the “right thing,” political commitment affords no advanced notice or assured principle of verification. Her actions could have produced an arrogant child who is shortly thereafter killed, or a fighting, committed spirit who suffers the same fate. Political commitment requires acting without knowing the outcome and acting for those whom one ultimately will never know. A six-months’ glimpse into the life of the child is not the same as knowing the man he was to become. This insight is similar with regard to political action. No political act offers guarantees save one: it will affect others whom one would ultimately never know. What, then, could one hope for with such action?

The first thing to consider hits the heart of critical diversity. Those who benefit from our actions may be so radically different from us that we may even recoil at the discovery of whom they turn out to be.

Second, those who suffer from our actions may be those beyond our expectations.

Third, the first and second considerations lead to the realization that the epistemic act of trying to imagine the recipients of our actions collapses into the first desire of love, which would be an affirmation of the self. Put differently, it would involve simply positing versions of ourselves into a future whose condition of possibility requires the emergence of people who are both not us and also, possibly, not like us.

Fourth, this means acknowledging, through political commitment, the production of freedom that transcends us. This act of political commitment is simultaneously a manifestation of the second form of love. It offers the paradox of loving, by virtue of action, anonymous generations to come.29

The fourth kind raises the question of building a future, even in the face of circumstances that do not guarantee our having one. In effect, the message, politically understood, is this: learn we hope, but try we must.

#### Creating a new social world is key – antiblackness is mediated through contingent and concrete power relations that can be changed through radical transformation of the social world – the alt lapses into nihilism, which is profoundly individualistic and disempowering

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Lewis Gordon, “5: Thoughts on Afropessimism,” *Freedom, Justice, and Decolonization*, Routledge 2021, pp. 79-81.

In existential terms, then, many ancestors of the African diaspora embodied what Kierkegaard calls an existential paradox. All the evidence around them suggested failure and the futility of hope. They first had to make a movement of infinite resignation—that is, resigning themselves to their situation. Yet they must simultaneously act against that resignation. Kierkegaard, as we have seen, called this seemingly contradictory phenomenon “faith,” but that concept relates more to a relationship with a transcendent, absolute being, which could only be established by a “leap,” as there are no mediations or bridge to the Absolute whose distant is, as Kierkegaard put it, absolutely absolute. Ironically, if Afropessimism appeals to transcendent intervention, it would collapse into faith. If the Afropessimist’s argument rejects transcendent intervention and focuses on committed political action, of taking responsibility for a future that offers no guarantees, then the movement from infinite resignation becomes existential political action.

At this point, the crucial meditation would be on politics and political action. An attitude of infinite resignation to the world without the leap of committed action would simply be pessimistic or nihilistic. Similarly, an attitude of hope or optimism about the future would lack infinite resignation. We see here the underlying failure of the two approaches. Yet ironically, there is a form of failure at failing in the pessimistic turn versus the optimistic one, since if focused exclusively on resignation as the goal, then the “act” of resignation would have been achieved, which, paradoxically, would be a success; it would be a successful failing of failure. For politics to emerge, there are two missing elements in inward pessimistic resignation to consider.

The first is that politics is a social phenomenon, which means it requires the expanding options of a social world. It must transcend the self. Turning away from the social world, though a statement about politics, is not in and of itself political. As we have seen, the ancients from whom much Western political theory or philosophy claimed affinity had a disparaging term for an individual resigned from political life—namely, idiōtēs, a private person, one not concerned with public affairs, in English: an idiot. I mention “Western political theory” because that is the hegemonic intellectual context of Afropessimism; I have not come across Afropessimistic writings on thought outside of that framework. We do not have to end our etymological journey in ancient Greek. Recall that extending our linguistic archaeology back a few thousand years we could examine the Middle Kingdom (2000 BCE–1700 BCE) of Kmt’s Mdw Ntr word idi (deaf). The presumption, later taken on by the ancient Athenians and other Greek-speaking peoples, was that a lack of hearing entailed isolation, at least in terms of audio speech. The contemporary inward resignation of seeking a form of purity from the loathsome historical reality of racial oppression, in this reading, retreats ultimately into a form of moralism (private, normative satisfaction) instead of public responsibility born of and borne by action. The nonbeing to which Afropessimists refer is also a form of inaudibility.

The second is the importance of power. Politics makes no sense without it. As we have seen throughout our earlier reflections on power, Eurocentric etymology points to the Latin word potis as its source, from which came the word “potent” as in an omnipotent god. If we again look back farther, we will notice the Middle Kingdom Mdw Ntr word pHty, which refers to godlike strength. Yet for those ancient Northeast Africans, even the gods’ abilities came from a source. In the Coffin Texts, HqAw or heka activates the ka (sometimes, as we have seen, translated as soul, spirit, womb, or “magic”), which makes reality.20 All this amounts to a straightforward thesis on power as the ability with the means to make things happen.

There is an alchemical quality of power. The human world, premised on symbolic communication, brings many forms of meaning into being, and those new meanings afford relationships that build institutions through a world of culture, a phenomenon that Freud, we should recall, rightly described as “a prosthetic god.” It is godlike because it addresses what humanity historically sought from the gods—protection from the elements, physical maledictions, and social forms of misery. Such power clearly can be abused. It is where those enabling capacities (empowerment) are pushed to the wayside in the hording of social resources into propping up some people as gods that the legitimating practices of cultural cum political institutions decline and stimulate pessimism and nihilism. The institutions in Abya Yala and in Northern countries, such as the United States and Canada, very rarely attempt to establish positive relations to blacks, and Blacks the subtext of Afropessimism and this entire meditation.

The discussion points to a demand for political commitment. Politics is manifested under different names throughout the history of our species, but the one occasioning the word “politics” is, as we have seen, from the Greek pólis, which refers to ancient Hellenic city-states. It identifies specific kinds of activities conducted inside the city-state, where order necessitated the resolution of conflicts through rules of discourse the violation of which could lead to (civil) war, a breaking down of relations into those appropriate for “outsiders.” Returning to the Fanonian observation of selves and others, it is clear that imposed limitations on certain groups amount to impeding or blocking the option and activities of politics. Yet, as a problem occurring within the polity, the problem short of war becomes a political one.

Returning to Afropessimistic challenges, the question becomes this. If the problem of antiblack racism is conceded as political—where antiblack institutions of power have, as their project, the impeding of Black power, which in effect requires barring Black access to political institutions—then antiblack societies are ultimately threats also to politics defined as the human negotiation of the expansion of human capabilities or, more to the point, appearance, speech, and freedom.

Antipolitics is one of the reasons why societies in which antiblack racism is hegemonic are also those in which racial moralizing dominates; moralizing stops at individuals at the expense of addressing institutions the transformation of which would make immoral individuals irrelevant. As a political problem, it demands a political solution. It is not accidental that blacks continue to be the continued exemplars of unrealized freedom and against whom violence is waged against appearance and speech. As so many from Ida B. Wells-Barnett to Angela Y. Davis, Michelle Alexander, Angela J. Davis, Noël Cazenave have shown the expansion of privatization and incarceration is squarely placed in a structure of states and civil societies premised on the limitations of freedom (Blacks)—ironically, as seen in countries such as South Africa and the United States, in the name of freedom. 21

#### The world can and should get better – refusal is depoliticizing and views blackness as calcified, ignoring complexities characterizing human history

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Hortense J. Spillers, Gertrude Conaway Vanderbilt Professor of English at Vanderbilt University, “Or Else…,” The A-Line. August 30, 2018. <https://alinejournal.com/convergence/or-else/>

The three amendments, aka the “citizenship amendments,” are nested like matryoshka dolls, as ratification of the Fourteenth was made by the Republican majority grounds for readmission to the Union; by early 1868, enough states, via force and cajolery in some cases, had approved the law that became a part of the U.S Constitution, but Republican Radicals, White contends, “did not trust the South” and consequently “drafted the Fifteenth Amendment, which would prohibit states from ever restricting suffrage on the grounds of ‘race, color, or previous condition of servitude.’ “(White 94) Again, ratification, with reference to states still under military control, was mandated for readmission; the bill was submitted to the states in 1869 and ratified in 1870. A review of these complex maneuvers over a period of five years –we know, too, that access to the ballot would hound African-American community well into the Twenty-First Century—suggests that the vote has never been either a gift to black people, or at any point a flat-out certainty. Acquired within shouting distance of war’s end, the ballot would exact so severe a cost to the freedman and his/her children that we think of its troubled legacy today as an act of citizenship signed and sealed in blood.

Ironically, however twisted a standard of measure, we might gauge how far we’ve come by the degree of doubt expressible toward the efficacy of voter registration and electoral politics, as have a couple of my fellow writers in this issue. Even though I regard this argumentative posture as a strategic error of near-fatal proportions, I think I understand how we got here: basically, there are two related, but contrastive, founding propositions on black life and thought in modernity that critics have consistently elaborated since “time immemorial,” and by that, I mean the time that the student of history marks down as the beginning of her sense of crisis that initiates “blackness” in the Western context; as I understand it, Afrocentric views, for instance, elide “blackness” and Africanity which concept is driven back into the ancient world so that transatlantic slavery—relatively recent in light of an ancient human past—is not the origin—or more precisely, the prime time— of black personality’s historical identity, but, rather, an interruption of it. The diasporic, or (for lack of a better word) creolized reading of blackness lends weight to the term itself, insofar as blackness on this view defines a new historical apprenticeship, kin to Africanness, but distinct from it in its particular and stressful formation, instaurated by the trade. One “becomes” black –neither a phylogeny nor an ontogeny—by virtue of his/her interpellation in total Western Economy. These portions of discursive content imply discrete spatiotemporal registers, as the putative subjects of each overlap, but are not entirely conformable (even if they look exactly alike), and there’s the rub.

In the former instance, one discovers as many occasions as possible to establish and sustain symbolic contact with an imagined past, long receded, so that emphasis comes to rest on the power and porosity of myth and its ceremonial/ritualistic determinations wherever possible. Whether the Afrocentric sense eventuates in a vision of strategic movement toward a putative origin (as in “return” narratives/actualities of black politics of the Nineteenth and Twentieth Centuries), or of ideological movement toward it (“ancestral” ceremonies, ritual celebrations), this reading seems to engender a politics that is cultural, that looks “otherworldly”—the place of the ego-ideal—in its valorized reference to an imagined ancestral field. We would anticipate that electoral politics in its uninspirational mundaneness might actually be beneath it. In the latter instance, focus comes to rest on the conditions that make blackness possible in the first place and what several diasporic thinkers, Frantz Fanon, prominent among them, describe as “disalienation,” or the process of undoing the deleterious effects of slavery and colonization; because the diasporic view installs the latter as efficient cause of historic black movement, its political projects are charged with a sense of urgency as they resonate the era of their appearance with unmistakable identitarian markings. David Walker’s, Anna Julia Cooper’s, and W.E.B.Du Bois’s respective discourse, for example, could never be mistaken for a different time/cultural period, which means that such discourses are organically linked to their own “now.” Consequently, the political protocols of a diasporic commitment tend to reflect the sense of crisis that characterizes blackness as an emergent category of human possibility. Because blackness in the diasporic reading runs parallel to modernity, blackness is cut away from the idea of Africa—perhaps we could say more precisely that the idea of Africa is bracketed in this ideological outline, rather than jettisoned as it might have been a century ago—as the idea of blackness itself assumes the name of a virtually absolute origin. If we think of these concurrent strands of ideas as postures, then we realize the extent to which they determine not only how one stands, but where, as well as why.

This enormous conceptual legacy, one way or another, accounts, I believe, for the lion’s share of African-American theoretical production and might be said to proffer a rich example of the problem of being/becoming and time. In its impressive variations and combinations, recombinations and iterations, black theory-making has engendered its fullest efflorescence in my view in the post-sixties period with regard to both thematic variedness and complexity and the democratic and demographic distribution of its practitioners; it is also true that any one of these postures and/or variations on it might evince at any given moment a kind of intellectual sclerosis which would induce in turn a conservative politics. If, for example, a theory governed by a diasporic view of black history from which to commence its narrative reifies slavery and colonization as inherent properties in a subject, then the theoretical posture no longer serves as an intellectual technology, or a heuristic device, but, rather, comes to advance an ontological valence. In my own work, for instance, I attempt to advance a theory of flesh/body as a strategy to differentiate historical positionalities in confrontation with the modern world. But if this idea has any usefulness, it proposes the theory as an opening into a closure; a torque that kicks off movement or rotation in static properties. But I should hope not to lose sight of the human potential that the subject of the flesh embodies; perhaps another way to say this is that the enfleshed subject inscribes an opening in a chain of necessity rather than a last word. The theory does not exhaust the subject that it would address, but attempts to highlight it. To hold to the view that the enfleshed subject is actually chattel or property—which we cannot say, insofar as we have merely established a subject possibility in this case—defeats the purpose of discriminating in the first place between a conceptual device on the one hand and a speaking (even if barred) subject on the other.

I have taken, then, the long way around in order to say that the ballot does not lose efficacy when it is wielded by black personality because the latter was once defined as anomie, as chattel. In other words, to premise the future of blackness on its past is to be mired in timelessness, which is precisely to be bereft of historicity, of differentiation, of progression. But moreover, it confuses a conceptual narrative, or a position in discourse, with an actual narrative that will always exceed it. To disparage the black vote is not a sophisticated, or radical, response to anything, but reverberates instead, without meaning to, we might suppose, a long-standing hatred of black people and their aspirations. To express doubt about the vote, especially this election season, in light of what we face now is beyond criticism: it is quite simply to embrace the inevitability of violence, and one should avoid flirtation with violence unless she is willing to put herself in its path. Anything less is an act of bad faith; I would go so far as to say that the failure to cast a vote at the coming midterms is an immoral act for at least two reasons that might go without saying, but bear repeating nonetheless: the meaning of suffrage for generations of African-Americans and the suffering that it has exacted over the decades and the certain danger that the current presidency and a treasonous, complicit Republican congressional majority pose to the United States and the world. Do we need to count the ways that we are doubtless threatened?

When I was a child, I not only spoke as one, but imagined like a child, too—a sauce pan, for instance, turned upside down made a really great hat—shining and irrepressible, cocked upside the head to the left, or the right; fabulous for a stately procession; the family’s beautiful mahogany console housed a radio with a green light in it, and if you squeezed yourself behind the device and examined the exposed radio tubes in it, you watched as they were suddenly dissolved in your mind’s eye into the skyline of a good-size city that you were taking in from a bird’s eye-view; if you stood a mop head up and drew a face on its handle, you had a pretty good doll for a day, especially if your father, or a sibling, whittled down the handle. In this world of discovery and surprise and everyday objects charged with magic, a word like “treason” signaled a remoteness light years away; in fact, it was a “school” word about as close to a little four- to seven -year old black girl’s reality as eighteenth-century images of white guys in tri-cornered hats, crossing the Delaware (wherever that was!), except that one of them was oddly named “Benedict Arnold,” who was not a very nice guy, we were told, and nowhere near “George Washington,” “who never told a lie.” Somebody cut down a cherry tree and, asked about it, ‘fessed up. (Or was that Abe Lincoln?) But this “treason” business started growing up, too, not unlike its young host body, as its next iteration was closer in both time and space to that of the school children—it was the Civil War and “seceding” states from the “Union.” Why would “they,” including the state where our young lady lived then and now, do that? Ah! And she learns that “history hurts.” And at that precise moment, one put away childish things, even though Emmett Till, my contemporary, was child enough. One day, long after, the end of a line in the presidential oath of office caught my attention, in fact, it quite astonished me—to defend the United States against “all enemies, foreign and domestic.” But is it possible for the “enemy” to be domestic? And what if it is? I thought I’d never live to see the day when I would have to ask myself that question and to wonder what the citizen’s duty might be in the realization that it is not only possible, but under certain circumstances, as appears to be the case at present, quite likely. And here we are, faced with the actual possibility now that the long-deferred democracy we have labored toward is poised to take a blow that could permanently end it. If voting could stave it off, who would refuse? Hold that thought.

#### K of antitrust is reductive – antitrust can be leveraged as a tool of structural *anti*racism, but failure to combat conservative right wing legal thought produces the opposite effect

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(John, “Racist Antitrust, Antiracist Antitrust,” The Antitrust Bulletin, Sagepub)

But a change in goals does not always yield an immediate change in implementation-put another way, choice of an end does not necessarily dictate the choice of means. The pair of cases discussed below frame the 1980s, a decade in which antitrust's end was fairly static, yet its means were still in flux. The first, Knights of the Ku Klux Klan ("KKK"), stands as one of the clearest, most admirable examples of antiracist antitrust in U.S. history. The second, Superior Court Trial Lawyers Association ("SCTLA"), is its opposite: the Sherman Act being deployed against an attempt to ensure adequate legal representation for indigent defendants, most of them being people of color.

Taken together, these two cases represent divergent paths. Which has the contemporary antitrust enterprise chosen to follow? The Supreme Court's most recent substantive decision, Ohio v. American Express ("AmEx"), suggests both room for hope and reason for concern. With the latter in mind, the essay concludes by offering four recommendations for how antitrust can retake the high road. By avoiding overemphasis on categorical labels or particular types of effects, and by recentering a focus on power, the antitrust enterprise can play a vital part in addressing-and avoid exacerbating-structural inequality.

A. Knights of the KKK: Antiracist Antitrust

After the U.S. military exited Vietnam in 1975, millions of Vietnamese, Laotian, and Cambodian people fled the region. 12 Rapid congressional action facilitated emigration to the United States for many of these displaced persons. 13 Many settled in coastal Texas, a designated resettlement site that offered a familiar opportunity for sustenance: fishing and shrimping. 14 Unsurprisingly, the refugees' integration into the local economy was met with hostility on the part of incumbents. One antiimmigrant tactic was political: at the behest of the Texas Shrimp Association, the state legislature passed a bill in early 1981 that imposed a 2-year ban on issuing new shrimping licenses. 15

But in the towns and cities along the Gulf coast, nativist locals were unsatisfied with what they perceived to be a half-measure by the state legislature. Boat merchants began charging premium prices to Vietnamese immigrants. 16 Bait shops refused to sell to them. 17 Rumors flew, with some locals suggesting the new shrimpers were being subsidized by the U.S. Government. 18 Incumbents suggested the new entrants were overfishing and underpricing. 19 A shaky cease-fire agreement was drawn up but quickly fell apart after the Federal Trade Commission warned that it violated the Sherman Act. 20 In January 1981, one of the nativist locals met with Louis Beam, a Grand Dragon of the Knights of the KKK, 21 to present the concerns of"a group of American fishermen." 22 The Klan moved swiftly. At a rally held on Valentine's Day in Santa Fe, Beam warned the crowd that it "may become necessary to take laws into our own hands." 23 The Grand Dragon went on to invite attendees to train at Klanorganized "military camps," inveighing that it would be necessary to "fight, fight, fight" and see "blood, blood, blood" for the salvation of the country. 24 Beam vowed to give the newcomers "a lot better fight here than they got from the Viet Cong. "25 The crowd watched a demonstration of how to bum a boat and later a cross.2 6 On a clear day in March, a shrimp boat owned by one of the long-term residents was seen carrying men garbed in the traditional white robes and pointed hats of the KKK. Most were visibly armed, and the boat had been fitted with-and was firing-a cannon. 27 Locals reported receiving threats that those who did business with Vietnamese immigrants would be viewed as "enemies." 28 A woman who had allowed an immigrant-owned fishing boat to use her docks was issued a warning: "You have been paid a 'friendly visit' do you want the next one to be a 'real one. "' 29 Klansmen burned crosses in the yards of immigrant shrimpers, 30 set their fishing boats ablaze, and firebombed a home. 31

Meanwhile, in Alabama, the cofounders of the Southern Poverty Law Center had been closely monitoring the Klan's activities. 32 In April 1981, Morris Dees and Joseph Levin filed a wide-ranging lawsuit in federal court, seeking to enjoin the Klan's reign of terror. Judge Gabrielle l(jrk McDonald, the first African American judge in the state of Texas, was assigned to hear the case. 33 The defendants called for her disqualification, referring to her supposed prejudice against the Klan. Beam publicly called her a racial slur. 34 Throughout the entire proceedings, Judge McDonald and her family received death threats and one-way tickets to Africa. 35

Among the fourteen counts pleaded were violations of Sherman Act   1 and   2. 36 The   1 claim formed the core of the antitrust case: plaintiffs alleged that the defendants-the Knights of the KKK, Beam, various anonymous members of the Klan, the "American Fishermen's Coalition," and several individual fishermen-had conspired "to force the Vietnamese fishermen class to terminate or at the very least curtail their commercial fishing business in the Galveston Bay area" and to try to "intimidate them into selling off sixty percent of their shrimping boats." 37 The conspiracy's goal, per the complaint, was to "eliminate or reduce competition" for incumbent fisherman in the area. 38 After granting class certification, Judge McDonald issued a preliminary injunction ordering the defendants to cease their campaign of violence, threats, and intimidation. The imbalance of societal and material power was subtly-and effectively---emphasized throughout Judge McDonald's opinion. Facts were presented without embellishment; they spoke for themselves. The reader learns, for example, of a Vietnamese shrimp seller who testified that "six weeks ago two American men drove up in a truck and pointed a gun at her" and that "her husband will not take out their shrimp boat on May 15, 1981 because she is afraid that he will be killed." 39

The antitrust analysis is notable for its clarity and brevity-indeed, to the contemporary observer, it is perhaps most remarkable for what it does *not* say. Although Judge McDonald began by stating that "the anti-trust laws" forbid a "lessening of competitive conditions in the relevant market," she went on to explain that plaintiffs could prove such a "lessening" by demonstrating an actual marketplace effect. 40 No formal market definition was required. Nor did the opinion engage in a protracted attempt to fit the defendants' conduct into a particular analytical category before deciding on the appropriate legal treatrnent. 41 Again, proof of actual harmful effects was sufficient, at least to receive a preliminary injunction. In August, the court made the injunction permanent and ordered it to be posted publicly in the Gulf Coast area. 42

B. FTC v. SCTL.A

SCTLA was another antitrust lawsuit targeting coordinated activity, but the similarities began-and ended-there. While Knights of the KKK was championed by civil-rights attorneys, SCTLA was the brainchild of a hard-right-wing economist. 43 In fact, the latter was filed against a group of publicinterest attorneys. Knights of the KKK exemplifies antitrust being used to counter coordinated power on behalf of displaced persons enduring personal and structural racism. SCTLA, on the other hand, exemplifies an antitrust enterprise oblivious to power imbalances and structural racism. James C. Miller III, President Reagan's first appointee to chair the Federal Trade Commission, was the first nonlawyer ever to hold that position. 44 Miller's doctoral studies were completed at the University of Virginia's economics department under James Buchanan, dubbed by some "the Architect of the Radical Right." 45 Buchanan had a controversial track record on racial issues-his academic center, formed amid Virginia's "Massive Resistance" to federally mandated school desegregation in the 1950s, was pitched as a means for preserving the state's "social order" and stymieing the "increasing role of government in economic and social life." 46

Buchanan was, according to Miller, one of his chief intellectual influences in the field of economics. 4 7 One of Miller's first actions as FTC chairman was to request a budget cut and a 10% reduction in personnel. 48 Unsurprisingly, the Agency's enforcement activity also plummeted. In just two years, antitrust actions dropped by nearly one-third, and consumer protection actions by more than onehalf. 49 But one particular type of litigation bucked the downward trend. Miller spearheaded an enforcement initiative aimed at professional associations-and he "particularly liked the idea of bringing some cases against lawyers." 50 The District of Columbia in the 1970s was a majority-minority city; over 70% of residents identified as Black. 51 More than 100,000 D.C. residents fell below the poverty line, with poverty rates exceeding 30% in some census tracts. 52 In a 1963 decision, the U.S. Supreme Court had held indigent defendants in criminal cases are constitutionally entitled to adequate representation. 53 D.C., like many jurisdictions, complied with this mandate via a dual system comprising a government-funded public defender's office and court-appointed private lawyers. 54 The District's public defenders handled just 8%-10% of indigent defendants, leaving court-appointed lawyers to take up the considerable slack, a situation "unique among major urban jurisdictions." 55 Despite the pressing need for quality representation-and despite runaway inflation rates throughout much of the 1970s-statutory rates for court-appointed work in the District stayed flat for more than sixteen years. 56 The D.C. Bar and the Judicial Conference of the D.C. Circuit released two reports finding that low compensation rates forced existing courtappointed lawyers to take on too many cases and dissuaded other attorneys from taking on any cases. 57 As the first report explained, "[A] system which is heavily weighed against the indigent defendant in terms of the compensation that [their] attorney will receive raises serious questions of equal protection. The indigent's rights under the Constitution are no less than the rights of the well-to-do." 58 Fed up with the situation, a group of court-appointed lawyers formed the SCTLA as a means of exerting political pressure. After initially casting about for the right tactical strategy, the Association was inspired to launch a strike by a suggestion from the dean of Howard University Law School: "[Y]ou will have to raise hell about this to attract somebody's attention." 59 The D.C. Governmentostensibly the intended "victim" of the planned stoppage-was supportive. At a meeting with Association lawyers, Mayor Marion Barry tacitly encouraged the strike, as he was "very sympathetic" to the cause. 60 And, once launched, the strike yielded rapid results: the City Council voted to increase

funding, thereby improving the "quantity and quality of representation received by ... indigent

clients. "61

Meanwhile, the Miller-helmed FTC had also been busy, opening an investigation into the Trial Lawyers Association before the strike had even begun. 62 On December 16, months after the strike had concluded, the Commission proceeded with a complaint against the lawyers' association and its four individual leaders. No practicable remedy was sought. 63 The local government had already voted to increase funding and, despite being the ostensible "victim," had neither asked the FTC to intervene nor sought to enjoin the boycotters under its own local antitrust authority. 64 Rather strikingly, FTC staff internally recognized that the Association's lawyers could not possibly have wielded market power. The Superior Court had the legal authority to order any member of the D.C. Bar to represent indigent defendants. 65 In fact, it had done just that during a prior strike in 1974. 66 Thus, the target of the strike could have simply ordered the attorneys to resume representation, ordered nonstriking attorneys to take on indigent clients, or both. The "victim" wielded all of the power. 67 Nonetheless, the FTC pursued the case all the way to the U.S. Supreme Court, which roundly censured the strike. (Justice Marshall, the only Black member of the Court, joined Justice Brennan in dissenting from much of the majority opinion. 68 ) The majority's reasoning was formalistic: categorize, then condemn. To the majority, the strike was a "price-fixing agreement, a 'naked restraint' on price and output." 69 Once categorized as such, the strike was deemed, ipso facto, illegal per se. 70 The fact that the boycotters clearly wielded no market power was irrelevant. The fact that the supposed "victim" had actively encouraged the strike was irrelevant. The fact that the strike benefited indigent defendants, many of whom were people of color who had endured decades of structural racism, was irrelevant. This was not antitrust's finest hour.

C. Which Path Have We Taken? The Promise and Pitfalls of Ohio v. Arn Ex These bookends of the 1980s-Knights of the KKK and Superior Court Trial La Jlers-suggest divergent approaches to the question of how to administer the antitrust laws. Which path has the contemporary antitrust enterprise pursued? The highest profile case of the past decade, Ohio v. AmEx, suggests both room for hope and reason for concern. AmEx began as a suit by the U.S. Department of Justice Antitrust Division against the three largest creditcard companies, Visa, AmEx, and MasterCard. 71 The suit sought to enjoin "no-steering" rules contractually imposed by networks on all card-accepting merchants. 72 In general, the challenged rules forbid merchants from presenting any particular credit network in a unique or differentiated way to their customers. Thus, for example, merchants cannot offer discounts for using a particular brand of card, tell customers "We prefer" a certain card, or inform customers of the costs associated with each brand. 73 Visa and MasterCard quickly settled, but AmEx-which charged the highest merchant fees-fought to keep its rules in place. 74 At trial, the Antitrust Division proved that AmEx's no-steering rules had stifled competition and increased card acceptance prices across all networks. 75 Merchants, in turn, passed along whatever costs they could to their customers via across-the-board retail price increases. 76 To its credit, the Division brought to the trial court's attention one of the most unusual-and most pernicious-effects of AmEx's rules. Because merchants cannot treat higher-cost cards differently, they must raise retail prices to all of their customers, including those who pay with cash, checks, money orders, and food stamps. 77 Such customers tend to be far less wealthy than credit-cardholders, especially AmEx cardholders. 78 AmEx passes some, though not all, of its supracompetitive merchant fees through to its own cardholders in the form of cardmember rewards. In other words, AmEx' s rules force the least wealthy members of society to fund lavish travel points and perks for the most affluent. 79 In a careful, well-reasoned decision, the trial court held that AmEx's rules were unreasonable restraints of trade. Judge Garaufis's opinion resisted easy formalizing and conclusory reasoning. The agreements at issue were between trading partners, not direct competitors. Yet, as Garaufis explained, AmEx 's rules did not "fit neatly into the standard taxonomy" of vertical versus horizontal restraints. 80 The challenged agreements themselves may have been "vertical," but the effects on competition were horizontal. 81 AmEx' s rules prevented its rivals from attracting additional business by offering lower prices or higher quality, as Discover learned in the 1990s. 82 As to effects, the court did not insist on a showing of any particular type of harm. Instead, it found that AmEx's rules cause a wide variety of harms, including higher card acceptance costs for merchants, higher retail prices for consumers, and stifled innovation. The court also found the regressive forcedsubsidization effect to be anticompetitive: [A] lower-income shopper who pays for his or her groceries with cash or through Electronic Benefit Transfer ... is subsidizing, for example, the cost of the premium rewards conferred by American Express on its relatively small, affluent cardholder base in the form of higher retail prices. The court views this extemality as another anticompetitive effect of Defendants' [rules]. 83 This particular effect technically occurred outside the relevant market ("general-purpose credit and charge card network services"). Again, however, the court refused to allow an artificial constructmarket definition-to distract from actual analysis of real-world effects.

The AmEx litigation thus yielded two bright spots: the Antitrust Division's decision to bring the case and Judge Garaufis's sophisticated decision. Both closely attended to structural power and inequity. Like Knights of the KKK, these were examples of antitrust directly confronting a power imbalance and seeking to redress its harmful effects.

But that success was short-lived. On appeal, the Second Circuit issued a sloppily reasoned decision for the defendant. (During oral arguments, one of the judges implied that the relevant market must also include cardholders because he personally received frequent credit card applications in the mail. 84 ) A disappointed Antitrust Division decided not to pursue the case further. A group of states led by Ohio, however, proceeded to appeal to the U.S. Supreme Court.

The majority opinion in Ohio v. AmEx carries all of the hallmarks of bad antitrust analysis, and poor-quality appellate review more generally. 85 It placed enormous weight on the "vertical vs. horizontal" dichotomy without appearing to recognize the horizontal nature of the restraints' effects. 86 Instead of analyzing the factual record before it, the majority simply ignored-and sometimes outright changed-inconvenient truths. 87 Instead of evaluating the relevant effects, the majority insisted on proof of one particular type of effect: an output reduction. 88 As to the regressive forced-subsidization effect-which was, again, part of the factual record-the majority opinion was silent. Instead, the majority conjured up a novel effect, positing without support the idea that AmEx's restraints were actually beneficial for "low-income customers. " 89

Today, the widely felt and regressive effects of AmEx's rules continue unabated. Given the racialized nature of wealth and income inequality in the United States, 90 those effects contribute to historically rooted structural inequity. A case that had begun so promisingly ended in ignominy-after something of a zenith at the trial-court level, AmEx now stands as a nadir of modem antitrust.

D. A Path Forward

As bookends for the turbulent 1980s, Knights of the KKK and SCTLA represent two paths for antitrust. AmEx offers a contemporary view of what traveling each of those paths can look like. The antitrust enterprise might take a flexible approach, cognizant of real-world power structures, always seeking to protect the relatively powerless against the more powerful. On the other hand, antitrust might ossify, placing more weight on assigning categorical labels than on assessing actual effects and narrowing the analytical lens until concentrated power-antitrust law's raison d'etre 91-becomes largely irrelevant.

Cases like SCTLA and *AmEx*, though troubling, may nonetheless offer useful insights. Set upon the right path, antitrust can serve as a useful tool in moving toward a more just society. Toward that end, four normative suggestions follow.

First, do not place undue weight on the "horizontal versus vertical" distinction. Some horizontal restraints are harmful, but not every horizontal agreement deserves hasty condemnation. The SCTLA majority allowed a label ("horizontal") to obscure a lack of power. Similarly, Justice Thomas's defendant-friendly reasoning in AmEx hinged in part on his statement that "vertical restraints are different" from horizontal ones. 92 But such broad pronouncements elide the fact that vertical restraints-like the ones at issue in AmEx-can cause effects identical to those caused by harmful horizontal restraints. 93

Second, do not place undue weight on categorizing conduct as "price-fixing," "a restraint on output," and the like. A classification system can offer value. But, like any other tool, it can be pushed far beyond its usefulness. Labeling the lawyers' strike "price-fixing" ( or, alternatively, a "naked restraint on output") was essentially the beginning and end of the SCTLA Court's analysis. Yet not all price-setting agreements are equally likely to cause harm, as most of those very same Justices had previously recognized. 94 A strike functions by temporarily disrupting the internal workings of a specific buyer of labor, 95 whereas the archetypical price-fixing cartel agreement functions by indefinitely controlling the market for a product. 96 From an economic perspective, it makes little sense to treat the two as analytically identical. Classification systems can obscure important nuance, in addition to posing the obvious risk of misclassification. 97

Third, do not artificially narrow the analytical lens by insisting on proof of a particular type of effect. Leading treatises, 98 law-school casebooks, 99 amicus briefs, 100 and journal articles 101 suggest that all of antitrust can be boiled down to simple analysis of output effects. 102 As Bork put it, "The task of antitrust is to identify and prohibit those forms of behavior whose net effect is output restricting and hence detrimental. " 103 Antitrust law's output obsession may well have played a role in the SCTLA decision-recall the majority's characterization of the strike as a "naked restraint on price and output." The AmEx majority clearly fell into this trap, insisting that the plaintiffs demonstrate an output reduction despite abundant evidence of actual anticompetitive effects. This makes little analytical sense. Output reductions can be harmful or beneficial to consumers. Conduct can simultaneously push the output of multiple products in different directions. And anticompetitive conduct can be harmful without affecting output levels at all. 104 All of this counsels against overreliance on a single type of effect.

Like most disciplines, antitrust has developed a variety of labels and heuristics. But when analytical tools begin to consume the analysis, antitrust can sight of its target. An analytical tool is just that: a tool, to be used when it is helpful and set aside when it is not. To be clear, this is not a call for the abandonment of economic methodology. It is instead a call for better economics, tailored to suit the task at hand. And what is that?

Fourth, antitrust analysis must center the overarching purpose of the law itself: countering concentrated power. 105 Amid the complexity of contemporary markets, it can be easy to lose sight of that goal. This may help to explain the SCTLA and AmEx opinions, both of which were regressive in nature. It may also help to explain the federal enforcement agencies' otherwise-puzzling decisions to weigh in against efforts by rideshare drivers-disproportionately people ofcolor 106 -to organize. 107 Through a narrow lens, collective organizing by workers can be viewed as "horizontal price-fixing" or "outputreducing," as it was in SCTLA. 108 But, stepping back for a moment, is there any reason to worry that rideshare drivers will exercise dominance over Uber and Lyft, even if they receive limited collective bargaining rights? Keeping antitrust's goal in view is appropriate not only on deontological grounds but also on utilitarian ones: It allows scarce enforcement resources to be more helpfully allocated.

Divergent paths lay open. The first leads to ossification and erroneous outcomes. 109 When antitrust analysis is overly constricted, it risks exacerbating systemic inequality and becomes prone to harming those whom the laws were meant to protect. The alternative is a more flexible, robust approach attuned to economic realities, one that allows enforcers and judges to maintain focus on furthering the law's fundamental purpose. If-but only if-the antitrust enterprise does so, it can play a vital role in helping to correct structural imbalances of power.

#### Aff is a better mechanism of addressing antiblcak violence – attention to the role of contingent economic and legal forces in producing antiblackness is key to racial justice

Fox 21 – Law professor at Stetson University.

James W. Fox Jr, “Black Progressivism and the Progressive Court,” *The Yale Law Journal Forum*, 6 January 2021, pp. 414-420, https://www.yalelawjournal.org/pdf/FoxEssay\_81a8zrrr.pdf.

IV. BLACK PROGRESSIVISM AND THE PROGRESSIVE COURT

There are two important themes evident in each of these writings from early Black progressives: the systemic nature of racism and the essential connection between racial and economic justice. For each of these authors, racism was far too complex and pervasive for it to be addressed by any single front. Indeed, to limit antiracism in that way would in fact support racism by allowing it to accumulate and solidify power across other spheres. This was one of the things Wells and Du Bois found so problematic with Booker T. Washington's accommodationism and its hyperfocus on industrial education. 77And while Washington and the progressives may have agreed on the importance of economic development generally, Washington's cultivation of millionaires like Andrew Carnegie made the anticapitalist strand of Black progressivism unpalatable for conservative Bookerites.

Comparing the Black progressive thought sketched here with the Court's "pro-rights" cases of the middle period of the Lochner era, it becomes clear that the isolated and status-quo enhancing nature of the opinions meant they would, in the minds of Black progressives, have little chance of success. 78For instance, when the Court struck down the Alabama peonage law in Bailey it explicitly abjured race as a basis for its decision. 79Rather, the Court focused on how the law criminalized a breach of contract and thus converted a personal-service contract into a type of servitude. 80Certainly the outcome of the case was welcome to Black progressives, who had been highlighting the injustice of peonage laws for almost thirty years. For Black progressives, however, the issue was not that the law criminalized contract relations, but that peonage re-established racial slavery. By divorcing its reasoning from the problem of race, the Court avoided confronting how this peonage law was part of a system of racial oppression that also violated the Reconstruction Amendments. Doing so would have required looking behind cases like Giles, Plessy, and the Civil Rights Cases and the related doctrines supporting states' rights and limited federal powers. Instead, the Court could rely on a contract-enhancing analysis arguably consistent with Lochner to provide some enforcement heft to the Thirteenth Amendment while not displacing established Jim Crow jurisprudence.

Similarly, the Court in Buchanan overturned a Louisville ordinance prohibiting Black people from moving into a majority-white neighborhood. A full-throated Black progressive analysis of such a law might well have argued for the unconstitutionality of legal segregation and separation of the races. This was a perfect case to embrace Du Bois's idea that social rights were fundamental rights, or to declare that laws implicitly targeting race were invalid class legislation much as the Court had looked at the implied purposes of the labor regulations in Lochner. But this would have required overturning the underlying justification for Plessy and Pace; indeed, the Louisville ordinance was drafted to fit neatly within those cases because it also barred white purchasers from moving into majority-black neighborhoods. Overturning the ordinance seemed to require a confrontation with the Pace-Plessy doctrine. The Court again sidestepped this conflict. The Court emphasized the need to protect the property rights of the white owner. While the Black progressives working with the interracial NAACP, which brought the case, were clearly pleased with the result, the fact that the Court dodged the racial equality issues meant that, under the doctrine of Buchanan, residential segregation would remain divorced from systemic racism. And since the Court's opinion ended up supporting the rights of white property owners, it meant that Black people could only benefit if they could find a sympathetic white owner to sell to them. Whereas Black progressivism focused on the broadly unequal distribution of property caused by centuries of slavery, the Court's focus on protection of de facto property distributions not only avoided this problem but arguably upheld it, for if white people had the constitutional right to sell to Black people they also had the right not to. Residential segregation by custom--which Du Bois, Fortune, and Wells all viewed as on par with legal segregation--was legally secured under the rule of Buchanan.

The Court's penchant to avoid systemic issues was also apparent in the voting-rights case of Guinn v. United States. Oklahoma, soon after obtaining statehood, rewrote its election laws to exclude Black people from suffrage. It did so by implementing a literacy test and excepting white Americans through a grandfather clause timed to coincide with a date prior to the Fifteenth Amendment. The Court overturned the grandfather clause, but expressly upheld the literacy test as being race-neutral, clinging to (although not citing) its 1898 holding in Williams. From the perspective of Black progressivism this type of surgical constitutionalism served only to support the vast swath of racially discriminatory election laws. While enforcement of the Fifteenth Amendment was clearly cheered (the NAACP had argued as an amicus in the case), the failure to address the system of suffrage discrimination itself served to support that discrimination in its effects, a problem the NAACP and other would spend decades combatting. This fact--that in each case the Court managed to address a narrow issue and that the cases had relatively little systemic impact--highlights another aspect of the Black progressive critique. As Michael Klarman has observed, victories in cases such as Guinn were essentially meaningless precisely because litigation strategies required extensive financial resources and extended civil-society networks. 81But absent significant economic development in Black communities, resources for long-term test litigation strategies were thin indeed. The economic and wealth critique advanced early on by Thomas Fortune still rang true: So long as wealth remained primarily in the hands of white corporations and property owners and wages remained low and discriminatory, sporadic cases like Buchanan, Bailey, and Guinn provided no de facto equality, even on the very topics they addressed. Without the federal government's willingness to fund basic citizenship programs, such as broad-based educational reforms, labor protections, or equal-suffrage enforcement, little progress could be made. As Ida Wells had observed and predicted, mass disenfranchisement in the South produced political paralysis on race issues nationally, and the Lochner-era Court's concurrent doctrines that greatly constrained federal powers only layered on more obstacles to racial justice. 82

So, did the Court's post- Lochner race jurisprudence matter? To the extent it reflected and revealed tensions, fissures, and cracks in the Court's constitutional doctrines, they may have helped some. And given the limited range of options, they were some of the few tools available for the NAACP to build its long-term strategies. It also may have helped that there was some movement on other progressive fronts, including a spate of constitutional amendments and some state and local advances outside the South. But as Black progressives understood better than either white progressives or procapitalist libertarians, no ideological or jurisprudential approach--not liberty of contract, not prolabor progressivism, not property rights--could lead to broad-based racial quality. So long as racial equality was not a central doctrinal and political goal, so long as equal protection and equal citizenship were seen as occasional byproducts rather than animating ideals, and so long as the challenges to the historical intertwining of racial and labor oppression and punishment remained politically and economically fragmented, law was unlikely to be much help in realizing the hopes of Black Abolition and Reconstruction.

This brief inquiry into the jurisprudence of the Progressive Court and the critique of Black Progressives also speaks to our contemporary conflicts about the nature of constitutional equality and freedom both in the Court and on the ground. Much like the Progressive Era, the modern Court has embraced a procapitalist, antilabor approach to constitutional powers and individual rights. 83And much like the early Progressive Era Court, the modern Court has curtailed a prior generation's civil-rights and racial-justice advances. 84But rather than simply identifying this historical parallel on the Court, the above focus on Black Progressivism asks us to also consider the parallels between Black Progressivism and modern Black and antiracist writers and activists. And some of the parallels are striking. Ida Wells and the Niagara Movement both identified how the southern criminal-justice systems replicated slavery relations, blocked efforts to advance racial equality, and entrenched white supremacy's national political power. That critique continues today with the movement for prison abolition and other fundamental criminal-justice reforms, including efforts to decouple criminalization from voting eligibility. 85Thomas Fortune, Ida Wells, and W.E.B. Du Bois all identified the relationship of racial oppression and race-based capital and wealth accumulation as deeply unjust and dangerous for democracy. Living now during the second Gilded Age, with wealth inequality just as stark as that which motivated the Progressive Movement, we too must ask how and why the stubborn persistence of racial injustice maps onto the ever widening wealth and income chasm. 86As Ta-Nehisi Coates, Richard Rothstein, Thomas Mitchell, and others keep telling us, modern racial oppression is fundamentally inseparable from governmental, legal, and economic structures of wealth and class distribution, a point that would have not surprised Black Progressives of the 1890s and 1900s. 87And just as Fortune, Wells, and Du Bois each challenged judicial doctrines and categories such as the tripartite civil-political-social rights rubric or the condemnation of class legislation, so today do we need to critique facially neutral doctrines like colorblindness in equal-protection law and the irrelevance of racial-bias fourth amendment law. 88

Of course none of these parallels should be asked to bear too much of the load of our current efforts to create racial justice in law. Current conflicts, doctrines, and structures have a multivariate history, some of which trace back to the Progressive era and before, and some of which have newer manifestations. Still, the critiques presented by Black Progressives should help us remain vigilant about how racial oppression and economic and class dynamics have a long history of reinforcing and reconstructing each other. White wealth was built in large part by enslaved and segregated Black labor. The contemporary Black Lives Matter civil-rights movement is not just an extension of the resistance to organized and governmental violence that Wells and others presented over 100 years ago. It is also an argument about how economic exclusion and oppression--the lack of employment and educational opportunities, unsafe and unaffordable housing, lack of access to medical care--interlock to maintain racial injustice, of how the injustice itself is simultaneously denied by and essential to the dominant political and legal ideologies. Absent full attention to racial justice as a primary goal, other ideologies, whether libertarian or communitarian, liberal or conservative, leftist or reactionary, are going to leave undone the equality mission embedded in the Reconstruction Amendments, like the prolabor, probusiness, or Progressive ideologies of the early 1900s. But just as importantly we can also see how current doctrines can be rhetorically turned in the direction of justice, as Wells did by identifying segregation as itself the worst type of class legislation and as the NAACP did in using Lochner Court's libertarianism as one of its tools to challenge Jim Crow. Resistance to the Court's current doctrines must involve both the development of alternative doctrinal paths and the reconfiguration of those paths the Court has already taken, and they must, like Wells, Fortune, and Du Bois, always keep one eye on the lived experiences of inequality that show us why the work is important.

#### ONLY way to solve is via the plan – the failure of past reforms was NOT because of an inevitable antagonism at the heart of society, but a refusal to connect racial equality to a critique of liberalism, capitalism, and domination – we both can and must go further in our political commitment to universalizing freedom

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Aziz Rana, “Conclusion: Democracy and Inclusion in the Age of American Hegemony,” *The Two Faces of American Freedom*, Harvard University Press 2010, pp. 328-337.

Even with such developments, however, the present moment is not without its resources for confronting both the internal decline of free citizenship and the globalized commitment to pacification. And these resources are closely tied to the politics of inclusion and its implications in the post– New Deal order. This is because the previous vision of more robust equality has never entirely died. In fact, recent reform efforts have had a second and competing trajectory, although this trajectory is often obscured at present. For radical reformers, inclusion required overcoming the general reduction in the meaning of citizenship and thus recovering the historic project of independence— only now expanded to incorporate everyone. In the process, this meant fundamentally dismantling the structures of authority at home and abroad that undermined self-rule and made free citizenship impossible. At its most expansive, the American civil rights movement of the 1950s and 1960s in particular combined arguments about internal freedom and external power, while at the same time claiming a popular capacity to speak for the common good. This often-submerged legacy of the movement hints at the continued potential for thinking systemically about today’s problems. It also provides the connective historical link between nineteenth- century mass mobilization and reform projects in the present day, which similarly would seek to defend a universal and nonimperial ideal.

Despite the demise of settler empire, the American practice of international police power and global primacy persists in treating outsiders as instruments for the achievement of national ends. In the nineteenth century, these ends took the form of rich internal accounts of liberty and political possibility. Now, however, they increasingly appear to be domestic security as such and the indefinite protection of American status. In effect, the United States’ orientation to the world combines some of the most problematic ideological features of the settler past without its emancipatory aspirations. It continues to view outsiders— including immigrants within our borders— as part of a dependent periphery, to be used for the extension of national wealth and dominance. Yet these practices have become detached from the meaningful provision of economic and political self-rule for Americans. In a sense, the key challenge for the present is to invert such developments, to revive accounts of self-rule, and to dissolve their connections to external subordination at home and abroad— to make freedom truly universal. These final pages employ arguments from the civil rights period to draw out the contemporary implications of this project and to suggest current possibilities for connecting efforts at inclusion with a broader revision of the substance and goals of collective membership.

The Two Civil Rights Movements

Since the entrenchment of the New Deal order, the civil rights movement has embodied the most sustained effort to revive both the vision of liberty as self-rule and to connect this vision with a critique of empire. Today this legacy is almost entirely forgotten, in large measure because the mid-twentieth-century struggle for black equality always had two conflicting dimensions. On the one hand, efforts to end racial segregation and formal legal discrimination sought to incorporate blacks fully into American projects of hegemony abroad and security at home. They emphasized social mobility for middle- class blacks and inclusion for some into arenas of corporate, professional, and political power. These features are perhaps most tellingly illustrated by the legal prong of black attempts to end racial inequality. The best-known civil rights litigation of the 1950s involved segregated primary schools, but the earliest test cases of the National Association for the Advancement of Colored People (NAACP) focused on postgraduate professional study— especially law school. One of the first serious victories in the NAACP legal strategy was 1938’s Missouri ex rel Gaines v. Canada, which held that Missouri violated equal protection guarantees by failing to provide in-state law school education for black students. A decade later, Sweatt v. Paint er (1950) went further, holding that individuals could in no way be denied access to law school on the basis of race.1 For these NAACP lawyers, equality was crucially about winning for blacks the opportunity to achieve professional status and to participate at the highest echelons of corporate and political leadership.

In the mid-1960s, in the wake of tremendous popular unrest and mobilization across the American South, President Lyndon Johnson pressed Congress to end legalized segregation and to provide all blacks with voting rights. In many ways, these reforms embodied a choice by white politicians at the national level to protect New Deal liberalism by removing the eyesore of southern segregation and by making regional practices consistent with those prevailing elsewhere in the country. In other words, such reforms sought to preserve American domestic economic and political stability while strengthening U.S. moral standing internationally. This essentially preservative role was shared by many in the black middle class, who had long viewed the civil rights struggle in terms of liberal inclusion and elite social mobility. In fact, much of the traditional leadership within the black community was opposed to combining a critique of legal discrimination with either more extensive domestic reform initiatives or with challenges to U.S. global power, particularly in the context of Vietnam. For instance, Whitney Young, the head of the Urban League, warned activists at the NAACP’s 1966 convention that the League would denounce any groups that tied issues of “domestic civil rights with the Vietnam Conflict.”2

The long-term victory of these voices within the civil rights movement not only has set the terms for today’s discussions of race but also has shaped the very meaning of those previous struggles and therefore our political inheritance as Americans. In particular, it has meant that goals of black equality in the United States are largely disconnected in the political imagination from broader independence struggles in Asia, Latin America, and Africa. Racial equality is understood as a specifically American project of integration, one that primarily consists of providing worthy elements within the black community with an equal opportunity to achieve professional and middle-class respectability. There is no doubt that this project has brought with it clear benefits, especially the steady reduction of those everyday forms of humiliation— from name calling to formal discrimination and random violence— that historically marked the black experience. Yet the focus on incorporating black elites into the structures of American authority has also come at a clear cost. It has involved nothing less than ignoring our most recent collective attempt to create a truly inclusive community premised on democratic self-rule—to imagine inclusion as a call to elevate everyone to the status of free citizens.

For many civil rights activists, the goal of popular mobilization and the hope embedded in the project of black emancipation lay precisely in the fulfillment of this vision. At the end of his life, W. E. B. Du Bois warned civil rights leaders that simply eliminating legal segregation would not alter the position of economic and political subordination confronting most blacks. Shortly before leaving for exile in newly independent Ghana, Du Bois told a college audience in North Carolina that although the United States was “definitely approaching . . . a time when the American Negro will become in law equal in citizenship to other Americans,” this represented only “a beginning of even more difficult problems of race and culture.” Ending formalized in equality was only a prerequisite for creating a community grounded in the substantive freedom of its members. Such freedom required challenging corporate and governmental hierarchies, which denied most individuals, regardless of race, economic independence and daily control over their work life. Only if these hierarchies were dislodged would Americans finally “restore the democracy of which we have boasted so long and done so little.”3

Moreover, Du Bois directly tied this project of freedom at home to confronting empire in all its manifestations, including the persistent and informal modes of external control wielded by powerful states. Du Bois understood the black experience in the United States as a particular variant of Europe’s larger colonial legacy and thus believed that any meaningful commitment to eliminating the vestiges of colonialism meant supporting its elimination everywhere. It was no accident that Du Bois chose to live the remainder of his life in Nkrumah’s Ghana, as a symbol of anti-imperial unity. Du Bois hoped that blacks in the United States would take the lead in reshaping America’s position in the world and in making common cause with colonized peoples throughout the globe to alter their conditions of political and economic dependence. In the words that echoed the United States’ own postcolonial founders, he imagined a truly free Africa, which “refuse[d] to be exploited by people of other continents for their benefits and not for the benefit of the peoples of Africa” and that would “stress peace and join no military alliance and refuse to fight for settling European quarrels.”4

One leader who not only heard Du Bois’s call but struggled to situate it as the basis of an organized social movement— capable of standing as a government behind the government— was Martin Luther King Jr. Today King is widely viewed as the patron saint of civil rights activism, conceived largely as an effort to end legal discrimination and to provide upwardly mobile blacks with an equal opportunity to achieve social power. However, his actual views and those of many of his supporters were far more expansive. In King’s final book before his death, Where Do We Go from Here? (1967), he explicitly joined his vision of liberty to the universal republican ideals of radical Populists and Progressives. King argued that the black condition in the United States was that of “educational castration and economic exploitation” and that overcoming racism required more than merely ending formal segregation; it entailed “a radical restructuring of the architecture of American society.” According to him, black subordination drew sustenance from the same forces that concentrated wealth and political control in fewer and fewer hands while justifying the permanent global extension of America’s military footprint. In his view, the “evils of racism, poverty and militarism” were deeply intertwined and had to be overcome by actions that addressed both American international police power and the domestic elimination of popular authority.5

The first challenge for King was not to assert a particular programmatic agenda but rather to reclaim collective agency, eroded by the rise of centralized corporate and state institutions. He hoped that the civil rights movement would develop new organizational means by which a constituency within society could be permanently mobilized to wield democratic control. He argued that without such a social base, government would “elude our demands” and that whatever measures it passed would be for “use as supplicants” rather than products of a self- actualizing public will. According to him, for democracy to exist in practice, there had to be more than regular elections; individuals had to participate directly in shaping collective life. As King wrote, “We must develop, from strength, a situation in which the government finds it wise and prudent to collaborate with us.” In a sense, he hoped that civil rights groups and their supporters would replace the nineteenth-century laboring community as the stand-in for the public writ large. Rather than relying on the presumed virtue of those in power, or “wait[ing] passively until the administration had somehow been infused with . . . blessings of goodwill,” such mobilized agency would direct politics to conform to ideals of self-rule. Like the old collectivity of farmers and wage earners, this new constituency had the potential to connect its particular interests— in economic and political freedom— to the interests of all. It thus could serve as a voice of popular power, compelling state and economic elites to impose needed structural changes.6

Like Weyl, King outlined these changes by beginning from the recognition that American society was marked by tremendous abundance; in fact, the black position in the United States was that of “poverty amid plenty.” As such, it was time to abandon prevailing efforts “to compress our abundance into the overfed mouths of the middle and upper classes until they gag with superfluity.” Instead, social wealth should be employed not simply to free individuals from the most extreme forms of immiseration but also to establish the conditions for everyone to enjoy creative and meaningful work. In calling for the abolition of poverty, especially through measures such as a guaranteed income for all, King did not see the provision of economic security as an end in itself. Rather, he imagined it as an essential requirement for a society committed to making labor an activity of personal fulfillment— or, as Kallen would have phrased it, to transforming labor into leisure. To this end, he quoted at length from Henry George’s Progress and Poverty (1879), a classic text of the nineteenth- century’s robust populist tradition:

The fact is that the work which improves the condition of mankind, the work which extends knowledge and increases power and enriches literature, and elevates thought, is not done to secure a living. It is not the work of slaves, driven to their task either by the lash of a master or by animal necessities. It is the work of men who perform it for their own sake, and not that they may get more to eat or drink, or wear, or display. In a state of society where want is abolished, work of this sort could be enormously increased.

For King, as for Henry George before him, freedom entailed both economic self-rule and practical political control through mobilized and assertive social constituencies.7

Moreover, precisely because of the historic black position of exclusion, King saw any project of emancipation as admitting no color line or national barrier. At home this required imagining the civil rights movement as properly a poor people’s movement that incorporated blacks, impoverished whites, and immigrant communities (particularly from South and Central America). Since each group found itself denied both the benefits of economic independence and basic political authority, according to King, “only through their combined strength” would it be possible “to overcome the fierce opposition we must realistically anticipate.”8

Internationally, King’s commitment to self-rule meant following in Skidmore’s and Bourne’s footsteps and seeing the interconnections between in equality at home and continuing practices of global expropriation. In King’s view, “Equality with whites will not solve the problems of either whites or Negroes if it means equality in a world stricken by poverty and in a universe doomed to extinction by war.” In the context of the Cold War, he considered the ideological power of communism as in large measure a product of Western efforts to sustain systems of formal and informal rule across much of the globe. King wrote, “Communism is a judgment on our failure to make democracy real and to follow through the revolutions that we initiated. Our only hope today lies in our ability to recapture the revolutionary spirit and go out into a sometimes hostile world declaring eternal opposition to poverty, racism, and militarism.”9

In practice this meant two basic transformations in American foreign policy. First, it entailed repudiating the emerging modes of global authority, which, just as Nkrumah had worried, undermined the formal sovereignty of newly in de pen dent states and reduced large swaths of the global south to the de facto control of external forces. King saw the legacy of the Monroe Doctrine in Latin America as “tremendous resentment of the United States,” resentment motivated by permanent U.S. interference with local economic and political practices:

The life and destiny of Latin America are in the hands of the United States corporations. The decisions affecting the lives of South Americans are ostensibly made by their governments, but there are almost no legitimate democracies alive in the whole continent. The other governments are dominated by huge and exploitative cartels that rob Latin America of her resources while turning over a small rebate to a few members of a corrupt aristocracy.10

According to King, American complicity in local authoritarianism and economic expropriation was ultimately due to its commitment to maintaining an international police power. As a consequence, the second key transformation needed in American foreign policy involved the ideological rejection of such interventionism and the dismantling of the global military footprint that supported it. This police power asserted the right to intervene whenever and wherever the United States believed that democratic order was imperiled. King contended that, rather than promoting actual self- determination, American actions had the tendency to freeze disputes in ways that undermined lasting resolution or served external interests rather than local publics. They also propped up regimes with little internal legitimacy, which meant that these regimes could stay in power only with the continual investment of yet greater economic and military resources. King saw American support for apartheid governments across southern Africa— through corporate capital investments, trade, and defense alliances— as stark proof of how international police power, and its stated aims of promoting peace, had been transformed into an instrument of pop u lar suppression.

For King, the most explicit consequence of this American orientation to the world was that, rather than creating an actual condition of peace, it ultimately justified greater military adventurism. It treated local communities as means to the end of U.S. ideological ambitions and as instruments for the perpetual extension of global power. Precisely because of the need to overcome international disorder no matter where it existed, the United States was trapped in a project of endlessly extending its geographic footprint and defense commitments. According to King, such realities underscored how “the leaders of nations again talk[ed] peace while preparing for war.”11 It also meant that America found itself, as in Vietnam, forever subject to local insurrections and new potential dangers, which in turn warranted even greater military spending and territorial presence.

In his view, as in the view of republicans dating back to Harrington, the logic of the United States’ military infrastructure brought with it the steady reduction of economic and political freedom at home. It necessitated the centralization of power and entailed that America’s unprecedented social wealth be diverted from its appropriate task— creating an inclusive community committed to economic independence and the democratic elevation of all its members. Looking at an America marked by internal inequalities and external interventionism, King remarked, “A nation that continues year after year to spend more money on military defense than on programs of social uplift is approaching spiritual death.”12

In the years since King’s death, his account of universal republican freedom— let alone his stark warning to fellow Americans— has more or less been ignored in the public discourse. While King is deified as a twentieth- century hero, one to stand alongside the founders, his actual views are quietly discarded. To the extent that the civil rights agenda is pursued at all, it mostly involves further incorporating black elites into the institutions of American economic and political power. The notion of tying economic subordination within the United States to global patterns of inequality, let alone the democratic ideal of a permanently mobilized social agent, is hardly ever broached. Nonetheless, it is precisely this vision that holds out the possibility of restructuring collective institutions and of combining a mass politics of inclusion with a broad-based commitment to self-rule at home and abroad.

Humanitarian Imperialism, Immigration, and the American Periphery

King’s vision, as well as the more expansive legacy of the civil rights movement, raises a basic question for the current moment. What spaces exist not only for locating arguments about dependence but also for developing the popular potential to confront prevailing frameworks? Answering this question involves imagining the social constituencies and reform initiatives capable of pursuing an ideal of self-rule. It therefore means linking the concrete material interests of specific groups to the larger common good and thus showing how experiences of inequality or subordination illuminate a more pervasive social predicament. In particular, it involves addressing today’s twin realities: the retreat of robust ideals of collective possibility and the seemingly permanent expansion of American power. This power, although now disconnected from internal freedom as self-rule, continues to generate relations of external control as well as to justify the near limitless growth of presidential authority. These external relations both instrumentalize outsiders and transform U.S. dominance into an end in itself. Such realities are most strikingly highlighted by the dramatic alteration in the place of immigrants in collective life, from co-ethnic participants in settler empire to nonwhite members of a dependent periphery— one that exists even within our borders. In a sense, sustaining the expansive civil rights legacy means confronting this fact. It also suggests a new politics of inclusion, one with the potential to rehabilitate self-rule as a general and guiding social commitment.

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In the mid-1960s, in the wake of tremendous popular unrest and mobilization across the American South, President Lyndon Johnson pressed Congress to end legalized segregation and to provide all blacks with voting rights. In many ways, these reforms embodied a choice by white politicians at the national level to protect New Deal liberalism by removing the eyesore of southern segregation and by making regional practices consistent with those prevailing elsewhere in the country. In other words, such reforms sought to preserve American domestic economic and political stability while strengthening U.S. moral standing internationally. This essentially preservative role was shared by many in the black middle class, who had long viewed the civil rights struggle in terms of liberal inclusion and elite social mobility. In fact, much of the traditional leadership within the black community was opposed to combining a critique of legal discrimination with either more extensive domestic reform initiatives or with challenges to U.S. global power, particularly in the context of Vietnam. For instance, Whitney Young, the head of the Urban League, warned activists at the NAACP’s 1966 convention that the League would denounce any groups that tied issues of “domestic civil rights with the Vietnam Conflict.”2

The long-term victory of these voices within the civil rights movement not only has set the terms for today’s discussions of race but also has shaped the very meaning of those previous struggles and therefore our political inheritance as Americans. In particular, it has meant that goals of black equality in the United States are largely disconnected in the political imagination from broader independence struggles in Asia, Latin America, and Africa. Racial equality is understood as a specifically American project of integration, one that primarily consists of providing worthy elements within the black community with an equal opportunity to achieve professional and middle-class respectability. There is no doubt that this project has brought with it clear benefits, especially the steady reduction of those everyday forms of humiliation— from name calling to formal discrimination and random violence— that historically marked the black experience. Yet the focus on incorporating black elites into the structures of American authority has also come at a clear cost. It has involved nothing less than ignoring our most recent collective attempt to create a truly inclusive community premised on democratic self-rule—to imagine inclusion as a call to elevate everyone to the status of free citizens.

For many civil rights activists, the goal of popular mobilization and the hope embedded in the project of black emancipation lay precisely in the fulfillment of this vision. At the end of his life, W. E. B. Du Bois warned civil rights leaders that simply eliminating legal segregation would not alter the position of economic and political subordination confronting most blacks. Shortly before leaving for exile in newly independent Ghana, Du Bois told a college audience in North Carolina that although the United States was “definitely approaching . . . a time when the American Negro will become in law equal in citizenship to other Americans,” this represented only “a beginning of even more difficult problems of race and culture.” Ending formalized in equality was only a prerequisite for creating a community grounded in the substantive freedom of its members. Such freedom required challenging corporate and governmental hierarchies, which denied most individuals, regardless of race, economic independence and daily control over their work life. Only if these hierarchies were dislodged would Americans finally “restore the democracy of which we have boasted so long and done so little.”3

Moreover, Du Bois directly tied this project of freedom at home to confronting empire in all its manifestations, including the persistent and informal modes of external control wielded by powerful states. Du Bois understood the black experience in the United States as a particular variant of Europe’s larger colonial legacy and thus believed that any meaningful commitment to eliminating the vestiges of colonialism meant supporting its elimination everywhere. It was no accident that Du Bois chose to live the remainder of his life in Nkrumah’s Ghana, as a symbol of anti-imperial unity. Du Bois hoped that blacks in the United States would take the lead in reshaping America’s position in the world and in making common cause with colonized peoples throughout the globe to alter their conditions of political and economic dependence. In the words that echoed the United States’ own postcolonial founders, he imagined a truly free Africa, which “refuse[d] to be exploited by people of other continents for their benefits and not for the benefit of the peoples of Africa” and that would “stress peace and join no military alliance and refuse to fight for settling European quarrels.”4

One leader who not only heard Du Bois’s call but struggled to situate it as the basis of an organized social movement— capable of standing as a government behind the government— was Martin Luther King Jr. Today King is widely viewed as the patron saint of civil rights activism, conceived largely as an effort to end legal discrimination and to provide upwardly mobile blacks with an equal opportunity to achieve social power. However, his actual views and those of many of his supporters were far more expansive. In King’s final book before his death, Where Do We Go from Here? (1967), he explicitly joined his vision of liberty to the universal republican ideals of radical Populists and Progressives. King argued that the black condition in the United States was that of “educational castration and economic exploitation” and that overcoming racism required more than merely ending formal segregation; it entailed “a radical restructuring of the architecture of American society.” According to him, black subordination drew sustenance from the same forces that concentrated wealth and political control in fewer and fewer hands while justifying the permanent global extension of America’s military footprint. In his view, the “evils of racism, poverty and militarism” were deeply intertwined and had to be overcome by actions that addressed both American international police power and the domestic elimination of popular authority.5

The first challenge for King was not to assert a particular programmatic agenda but rather to reclaim collective agency, eroded by the rise of centralized corporate and state institutions. He hoped that the civil rights movement would develop new organizational means by which a constituency within society could be permanently mobilized to wield democratic control. He argued that without such a social base, government would “elude our demands” and that whatever measures it passed would be for “use as supplicants” rather than products of a self- actualizing public will. According to him, for democracy to exist in practice, there had to be more than regular elections; individuals had to participate directly in shaping collective life. As King wrote, “We must develop, from strength, a situation in which the government finds it wise and prudent to collaborate with us.” In a sense, he hoped that civil rights groups and their supporters would replace the nineteenth-century laboring community as the stand-in for the public writ large. Rather than relying on the presumed virtue of those in power, or “wait[ing] passively until the administration had somehow been infused with . . . blessings of goodwill,” such mobilized agency would direct politics to conform to ideals of self-rule. Like the old collectivity of farmers and wage earners, this new constituency had the potential to connect its particular interests— in economic and political freedom— to the interests of all. It thus could serve as a voice of popular power, compelling state and economic elites to impose needed structural changes.6

Like Weyl, King outlined these changes by beginning from the recognition that American society was marked by tremendous abundance; in fact, the black position in the United States was that of “poverty amid plenty.” As such, it was time to abandon prevailing efforts “to compress our abundance into the overfed mouths of the middle and upper classes until they gag with superfluity.” Instead, social wealth should be employed not simply to free individuals from the most extreme forms of immiseration but also to establish the conditions for everyone to enjoy creative and meaningful work. In calling for the abolition of poverty, especially through measures such as a guaranteed income for all, King did not see the provision of economic security as an end in itself. Rather, he imagined it as an essential requirement for a society committed to making labor an activity of personal fulfillment— or, as Kallen would have phrased it, to transforming labor into leisure. To this end, he quoted at length from Henry George’s Progress and Poverty (1879), a classic text of the nineteenth- century’s robust populist tradition:

The fact is that the work which improves the condition of mankind, the work which extends knowledge and increases power and enriches literature, and elevates thought, is not done to secure a living. It is not the work of slaves, driven to their task either by the lash of a master or by animal necessities. It is the work of men who perform it for their own sake, and not that they may get more to eat or drink, or wear, or display. In a state of society where want is abolished, work of this sort could be enormously increased.

For King, as for Henry George before him, freedom entailed both economic self-rule and practical political control through mobilized and assertive social constituencies.7

Moreover, precisely because of the historic black position of exclusion, King saw any project of emancipation as admitting no color line or national barrier. At home this required imagining the civil rights movement as properly a poor people’s movement that incorporated blacks, impoverished whites, and immigrant communities (particularly from South and Central America). Since each group found itself denied both the benefits of economic independence and basic political authority, according to King, “only through their combined strength” would it be possible “to overcome the fierce opposition we must realistically anticipate.”8

Internationally, King’s commitment to self-rule meant following in Skidmore’s and Bourne’s footsteps and seeing the interconnections between in equality at home and continuing practices of global expropriation. In King’s view, “Equality with whites will not solve the problems of either whites or Negroes if it means equality in a world stricken by poverty and in a universe doomed to extinction by war.” In the context of the Cold War, he considered the ideological power of communism as in large measure a product of Western efforts to sustain systems of formal and informal rule across much of the globe. King wrote, “Communism is a judgment on our failure to make democracy real and to follow through the revolutions that we initiated. Our only hope today lies in our ability to recapture the revolutionary spirit and go out into a sometimes hostile world declaring eternal opposition to poverty, racism, and militarism.”9

In practice this meant two basic transformations in American foreign policy. First, it entailed repudiating the emerging modes of global authority, which, just as Nkrumah had worried, undermined the formal sovereignty of newly in de pen dent states and reduced large swaths of the global south to the de facto control of external forces. King saw the legacy of the Monroe Doctrine in Latin America as “tremendous resentment of the United States,” resentment motivated by permanent U.S. interference with local economic and political practices:

The life and destiny of Latin America are in the hands of the United States corporations. The decisions affecting the lives of South Americans are ostensibly made by their governments, but there are almost no legitimate democracies alive in the whole continent. The other governments are dominated by huge and exploitative cartels that rob Latin America of her resources while turning over a small rebate to a few members of a corrupt aristocracy.10

According to King, American complicity in local authoritarianism and economic expropriation was ultimately due to its commitment to maintaining an international police power. As a consequence, the second key transformation needed in American foreign policy involved the ideological rejection of such interventionism and the dismantling of the global military footprint that supported it. This police power asserted the right to intervene whenever and wherever the United States believed that democratic order was imperiled. King contended that, rather than promoting actual self- determination, American actions had the tendency to freeze disputes in ways that undermined lasting resolution or served external interests rather than local publics. They also propped up regimes with little internal legitimacy, which meant that these regimes could stay in power only with the continual investment of yet greater economic and military resources. King saw American support for apartheid governments across southern Africa— through corporate capital investments, trade, and defense alliances— as stark proof of how international police power, and its stated aims of promoting peace, had been transformed into an instrument of pop u lar suppression.

For King, the most explicit consequence of this American orientation to the world was that, rather than creating an actual condition of peace, it ultimately justified greater military adventurism. It treated local communities as means to the end of U.S. ideological ambitions and as instruments for the perpetual extension of global power. Precisely because of the need to overcome international disorder no matter where it existed, the United States was trapped in a project of endlessly extending its geographic footprint and defense commitments. According to King, such realities underscored how “the leaders of nations again talk[ed] peace while preparing for war.”11 It also meant that America found itself, as in Vietnam, forever subject to local insurrections and new potential dangers, which in turn warranted even greater military spending and territorial presence.

In his view, as in the view of republicans dating back to Harrington, the logic of the United States’ military infrastructure brought with it the steady reduction of economic and political freedom at home. It necessitated the centralization of power and entailed that America’s unprecedented social wealth be diverted from its appropriate task— creating an inclusive community committed to economic independence and the democratic elevation of all its members. Looking at an America marked by internal inequalities and external interventionism, King remarked, “A nation that continues year after year to spend more money on military defense than on programs of social uplift is approaching spiritual death.”12

In the years since King’s death, his account of universal republican freedom— let alone his stark warning to fellow Americans— has more or less been ignored in the public discourse. While King is deified as a twentieth- century hero, one to stand alongside the founders, his actual views are quietly discarded. To the extent that the civil rights agenda is pursued at all, it mostly involves further incorporating black elites into the institutions of American economic and political power. The notion of tying economic subordination within the United States to global patterns of inequality, let alone the democratic ideal of a permanently mobilized social agent, is hardly ever broached. Nonetheless, it is precisely this vision that holds out the possibility of restructuring collective institutions and of combining a mass politics of inclusion with a broad-based commitment to self-rule at home and abroad.

Humanitarian Imperialism, Immigration, and the American Periphery

King’s vision, as well as the more expansive legacy of the civil rights movement, raises a basic question for the current moment. What spaces exist not only for locating arguments about dependence but also for developing the popular potential to confront prevailing frameworks? Answering this question involves imagining the social constituencies and reform initiatives capable of pursuing an ideal of self-rule. It therefore means linking the concrete material interests of specific groups to the larger common good and thus showing how experiences of inequality or subordination illuminate a more pervasive social predicament. In particular, it involves addressing today’s twin realities: the retreat of robust ideals of collective possibility and the seemingly permanent expansion of American power. This power, although now disconnected from internal freedom as self-rule, continues to generate relations of external control as well as to justify the near limitless growth of presidential authority. These external relations both instrumentalize outsiders and transform U.S. dominance into an end in itself. Such realities are most strikingly highlighted by the dramatic alteration in the place of immigrants in collective life, from co-ethnic participants in settler empire to nonwhite members of a dependent periphery— one that exists even within our borders. In a sense, sustaining the expansive civil rights legacy means confronting this fact. It also suggests a new politics of inclusion, one with the potential to rehabilitate self-rule as a general and guiding social commitment.