# 1NC – NDT Round 5

## FW

#### Debates should center on whether the United States federal government should expand antitrust law.

#### The “USFG” is three branches.

U.S. Legal ’16 [U.S. Legal; 2016; Organization offering legal assistance and attorney access; U.S. Legal, “United States Federal Government Law and Legal Definition,” <https://definitions.uslegal.com/u/united-states-federal-government/>]

The United States Federal Government is established by the US Constitution. The Federal Government shares sovereignty over the United Sates with the individual governments of the States of US. The Federal government has three branches: i) the legislature, which is the US Congress, ii) Executive, comprised of the President and Vice president of the US and iii) Judiciary. The US Constitution prescribes a system of separation of powers and ‘checks and balances’ for the smooth functioning of all the three branches of the Federal Government. The US Constitution limits the powers of the Federal Government to the powers assigned to it; all powers not expressly assigned to the Federal Government are reserved to the States or to the people.

#### Its is possessive

Macmillan Dictionary

[“its”, Macmillan Dictionary, http://www.macmillandictionary.com/us/dictionary/american/its, accessed 8-15-15, AFB]

Its is the possessive form of it.

#### Contextually, “expand the scope” means regulate additional anticompetitive behaviors

Cox ’19 [Kate, staff, “Antitrust 101: Why Everyone Is Probing Amazon, Facebook, Apple, and Google,” ARS TECHNICA, 11—5—19,

<https://arstechnica.com/tech-policy/2019/11/antitrust-101-why-everyone-is-probing-amazon-apple-facebook-and-google/>, accessed 6-2-21]

The Clayton Act expanded the scope of antitrust law to deal not just with monopolies, but specifically with anticompetitive behavior—basically, tactics that unfairly boost a company into a dominant market position or that unfairly keep a dominant company at the top and suppress competitors. At the highest level, these behaviors basically fall into two big buckets.

The first is growth through acquisition: you can't just buy out your primary competitor if the field isn't big enough for other companies to pose real competition. Consider the mobile market, for example: regulators decided the imminent union of Sprint and T-Mobile isn't anticompetitive, because T-Mobile and Sprint are the two smallest of the four major players. Even with one of them taken out, the market still has three national carriers. (And under the agreement with regulators, there will theoretically be a fourth carrier again.

But if AT&T and Verizon, the two dominant US mobile carriers by far, ever tried to merge operators, even the current crop of business-friendly regulators would almost certainly bring that proposal to a screeching halt. A deal of that magnitude would create a company so far beyond the reach of any potential competitor that no current player or new business could ever reasonably be expected to stand a chance of catching up.

The second metaphorical bucket holds the whole category of dominance through unfair dealings, which can be done by one company or as an agreement among several. One kind of unlawful anticompetitive behavior you find here is classic price-fixing. Recently, for example, StarKist was ordered to pay a $100 million fine after it and Bumble Bee were both found guilty of conspiring to fix prices in the canned tuna market, which is largely controlled by three companies.

Unfair behavior can also include a whole array of tactics undertaken by a single company, such as price discrimination, predatory pricing, or certain kinds of exclusivity requirements. These are the kinds of behaviors a federal judge found Qualcomm guilty of back in May, when she ruled that the company's business practices "strangled competition" with exclusive deals and patent licensing fees that charged device makers even when their products used a different brand of chip.

#### Prohibition is law forbidding action

Garner, Black’s Law Dictionary editor-in-chief, 16

[Bryan A., Black’s Law Dictionary, Fifth Pocket Edition, “prohibition”, p. 630]

prohibition. (15c) 1. A law or order than forbids a certain action.

#### Prefer our interpretation-

#### Limits---Not defending topical action unlimits the topic to anything being topical and stacks the deck against the neg from the start- fairness is a prior question because it determines our ability to engage.

#### Predictable Clash---Their interp moots pre-tournament research and strategy--- that’s key for argument refinement—which is inherently valuable and makes us more capable advocates-

#### Switch side debate enables reflexive openness and solves all of their offense --- reading it on the negative encourages empathetic learning and incorporates all sorts of different literature bases in to debates about topical affirmatives --- net benefit is linear thinking and meaningful engagement.

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

Tully ‘2 – Jackman Chari of Philosophical Studies at Toronto (James, Political Philosophy as Critical Activity, Political Theory 30 (4) p. 544-546)

Accordingly, understanding and clarifying political concepts, whether by citizens or philosophers, will always be a form of practical reasoning, of entering into and clarifying the ongoing exchange of reasons over the uses of our political vocabulary. It will not be the theoretical activity of abstracting from everyday use and making explicit the context-independent rules for the correct use of our concepts in every case, for the conditions of possibility for such a metacontextual political theory are not available. When political philosophers enter into political discussions and disputes to help clarify the language being used and the appropriate procedures for exchanging reasons, as well as to present reasons of their own, they are not doing anything different in kind from the citizens involved in the argumentation, as the picture of political reflection as a theoretical enterprise would lead us to believe. Political philosophy is rather the methodological extension and critical clarification of the already reflective and problematised character of historically situated practices of practical reasoning.'8 Thus, we can now see why the first step should be to start from the ways the concepts we take up are actually used in the practices in which the political difficulties arise. Here we 'bring words back from their metaphysical to their everyday use' to ensure that the work of philosophy starts from 'the rough ground' of struggles with and over words rather than from uncritically accepted forms of representation of them, which may result in 'merely tracing round the frame through which we look at' them. '9 On this view, contemporary political theories are approached, not as rival comprehensive and exclusive theories of the contested concepts, but as limited and often complementary accounts of the complex uses (senses) of the concepts in question and the corresponding aspects of the problematic practice to which these senses refer. They extend and clarify the practical exchange of reasons over the problematic practice of governance by citizens, putting forward a limited range of academic reasons, analogies, and examples for employing criteria in such-and-such a way, for showing why these considerations outweigh those of other theorists, and so on (often of course with the additional claim that these limited uses transcend practice and legis- late legitimate use). A theory clarifies one range of uses of the concepts in question and corresponding aspects of the practice of government and puts forward reasons for seeing this as decisive. Yet there is always the possibility of reasonable disagreement, of other theories bringing to attention other senses of the word and other aspects of the situation that any one theory unavoidably overlooks or downplays. Political theories are thus seen to offer conditional perspectives on the whole broad complex of languages, relations of power, forms of subjectivity, and practices of freedom to which they are addressed. None of these theories tells us the whole truth, yet each provides an aspect of the complex picture.20 This first form of survey enables readers (and authors) to understand critically both the problem and the proposed solutions. It enables us to see the reasons and redescriptions on the various sides; to grasp the contested criteria for their application, the circumstances in which they can be applied, and the considerations that justify their different applications, thereby passing freely from one sense of the concept to another and from one aspect of the practice to another; and to appreciate the partial and relative merits of each proposal. To have acquired the complex linguistic abilities to do this is literally to have come to understand critically the concepts in question. This enables us to enter into the discussions of the relative merits of the proposed solutions our- selves and present and defend our own views on the matter. To have mastered this dialogical technique is to have acquired the 'burdens of judgment' (in a broader sense than Rawls's use of this phrase is normally interpreted) or what Nietzsche called the ability to reason 'perspectivally'.21 This form of practical reasoning is also a descendent of the classical humanist view of political philosophy as a practical dialogue. Because it is always possible to invoke a reason and redescribe the accepted application of our political concepts (paradiastole), it is always necessary to learn to listen to the other side (audi alteram partem), to learn the conditional arguments that support the various sides (in utramque partem), and so to be prepared to enter into deliberations with others on how to negotiate an agreeable solution (negotium).22

## K

#### True, radical care work is impossible within the confines of the ballot. Their call for the ballot individualizes and neoliberalizes care relationships, turning the case.

Laurence Simard-Gagnon 16, Department of Geography, Queen’s University, “Everyone is fed, bathed, asleep, and I have made it through another day: Problematizing accommodation, resilience, and care in the neoliberal academy,” April 2016, https://onlinelibrary.wiley.com/doi/10.1111/cag.12274

Following the principle of competition, if some are to succeed it is necessary that some fail. Neoliberalism entails letting die, smothering even, the casualties of marketization. It entails individualization of life circumstances, including needs and, importantly, struggles and failures that occur when needs come in the way of an individual’s capacity to compete. Neoliberalism entails exhaustion.

As I am making the final revisions on this paper, I have been experiencing partial deafness for over a year, related to an untreated inner ear infection which will now result in permanent hearing loss. I did not attend to it sooner—it was not urgent, and time and energy are so scarce. They have been made even more so this year as my son has not been attending school full-time: some weeks he won’t go for more than two or three half days. The recent neoliberal cuts to public services in the province of Québec—where I reside—have translated into losses here and there, from removal of school transportation services to cuts in hours of specialized education, effectively reducing the amount of time an autistic child can spend at school. It is now late at night, and I write these lines on an old and very slow netbook as my computer broke down: when I bought it I had very limited financial resources, so I got a cheap model with no guarantee. I could have had it fixed sooner, instead I was striving to pass my PhD comprehensive examination these last months. There is nothing extraordinary in these circumstances, no one trait that could be neatly identified and removed, no one issue that could be adjusted or fixed, so that I could at last perform as a competitive and unencumbered individual.

The liberal normative prescription of atomic independence, combined with the neoliberal imperative of competition, have ~~debilitating~~ [massive] implications for mental health, particularly for those who are, like me, struggling to meet their needs and those of the ones they care for. Their overlapping actions individualize and decontextualize not only our needs and the circumstances in which needs arise, but also our personal failures to meet both these needs and the demands of individuated functionality.

Academia, care, and resilience

One of the ways in which liberal and neoliberal versions of independence and needs are most debilitating is through the idea of resilience. Resilience is often used as a term to celebrate the ongoing efforts of those who continue to perform despite difficulties and struggles related to their particular circumstances (see Jackson et al. 2007). When thinking in terms of care, the idea of resilience is problematic because, as Cindy Katz points out, social reproduction, almost by definition, must be accomplished (Katz 2001). No matter how difficult our circumstances or how bare our resources get, we, and the persons we care for, need to eat, sleep, be clothed, warmed, and loved, at least at a minimal level, in order to go on. Thus people will go to great lengths (of resilience) to perform care. Resilience, therefore, cannot be taken as an indicator that people are thriving despite the obstacles they encounter, despite the inhumane and unjust expectations they face, particularly in this moment of increasingly harsh neoliberalism (Diprose 2015). Resilience is in fact incredibly stressful. Beyond the financial and logistical stress associated with both pursuing an academic path and caring for others, being resilient implies sustaining the ever underlying stress of feeling that one is never adequately filling their own needs and those of their dependents.

In this context, resilience implies a projection into the future perfect (see Povinelli 2011 for a discussion on tenses in late liberal capitalist economies). It is the idea that there will be a future moment when the unsustainability of (poor) caring practices will abate. “When this article is written, this presentation done, this chapter completed—these hardships that I am inflicting on myself and the ones I care for will be over, and it will all have been worth it.” Except that this moment never comes. Within an increasingly competitive academic context, demands are ever emerging and there is no final moment of grace. As I am writing these lines, everyone in my house is finally fed, bathed, asleep, and I have made it through another day. It is an exhausting victory, yet nothing has been achieved that will not have to be recommenced tomorrow. I have made it through another day, yet the days of ‘another day’ are endless.

As problematic as it is, however, there are not many alternatives to being resilient, to reconcile as well as we can the ever emerging needs of existence and caring with the expectations for independent and competitive accomplishments, while waiting for an ever elusive future perfect. Resilience is indeed fuelled by the fear of breaking down, or, of falling behind.

Centering our vision of productive contributions as engagements of atomic and individuated individuals fosters a logic of “if you can’t take the heat, you had better get out of the kitchen.” In that context, asking for help is complicated or hindered by the apprehension that responses, even from compassionate and concerned peers and superiors, will be grounded in that logic: “It might be better for you to stop or take a break at this point,” or “Maybe later when your circumstances are better…”. This, however, is not going to happen; these circumstances will not get better, because once again they are not a punctual and discrete appendage of a self—or a cohort—that can be circumscribed or cut out. They are embedded in one’s very subjectivity, relationships, and existence.

Meanwhile the ways we care for one another within the context of academia are grounded in the dominant logic of independence and resilience. Our paths as academics are tightly woven in an institution fuelled by individualism and its correlate ideal of independence, and the ways in which we care for one another most often fail to radically challenge this, and to acknowledge the infinity and relationality of our needs. Caring others—people who care about struggling individuals, about inequalities in general—will attempt to facilitate academic paths, but often their actions are limited to more or less punctual accommodations, such as being a sympathetic listener, providing tissues in which to cry, and granting extensions. This entails, for the person receiving this type of support, the stress of navigating academic life through often last minute actions of generosity that are entirely dependent on the good will of others, and of knowing that this path of navigation is unsustainable. In my case it also entails a dissonant feeling of gratitude for this generosity and trust—it somehow entails being in the position where I am genuinely grateful for being allowed to continue maintaining my own existence and that of those who depend on me.

Punctual acts of generosity and trust are also costly for those who bestow them. Unsurprisingly in a liberal institution, and particularly in these neoliberal times, the burden of it rests on individuals. In addition to the logistical complications that supporting struggling individuals can entail, there is also the anxiety and dangers of venturing out of the current academic logic of individualism and competition. Watching struggling individuals struggle, and attempting to care for them, generates strain—I have seen it in the faces of compassionate peers and professors, I have felt it in my face when confronted by the needs of struggling peers. There again, future perfect is often our false and cold comfort: “I know it’s hard, but just get this thing done, give a good hard push this time around, and then it’ll be done”.

Caring, however, is necessary as a way to escape the debilitating effects of liberal and neoliberal paradigms of individualism and competition in the academy. On every university campus there are officially designated places of care. Although necessary, these services tend to respond to punctual and neatly delineated needs—such as discrete episodes of illness or mental distress. But the type of caring that truly facilitates my existence is one that does not seek out the independent and functional person within the grounded, slow, and encumbered mess that I am. Places of care are indeed those places that resist this sort of surgical violence.

In my institution one such place is found at a centre offering services for students who are older women and/or women with children. There, one can find a free meal, a bed to rest on, companionship, or silence. The centre is open everyday, to anyone, as the needs it addresses are understood to be universal, rather than punctual traits or shortcomings of a subjectivity that is dysfunctional in one (or a few) specific ways. Where needs are not failures, one does not have to identify as such. And so every moment spent in this place of care preserves for a little while longer the possibilities of my sustained presence in the academia—the possibilities of an alternative social project (see Povinelli 2011).

Although it may seem unsatisfactory and insufficient, maintaining possibilities in the face of exhaustion is critical—it is the basis of everything, including change (Katz 2001; Povinelli 2011). The type of caring that sustains my continued existence as an academic implies inserting a logic of relationality, responsibility, and inter-dependency within a structure grounded on individualism and independence—it implies inserting a transgressive current within an institution which doesn’t have the eyes to recognize it. Caring, then, is very much like Certeau’s perruque (Certeau 1991): a wig made from scrap material by a factory worker, who opportunistically appropriates glimpses of company resources to create something unseen and unforeseen by the power in place—to serve a subversive purpose. Like making a wig, caring within the academy is a creative diversion—of time, of attention, of affection, of academic positions designed to foster individual achievements and competition. It is a wink of recognition to other meanings within a totalizing space. It is an act of resistance.

#### Care appeals to community formation without a target— without a focus on the material consequences of trans-national capitalism – it is impossible to confront the impacts of ableism

Erevelles 14 (Nirmala, Professor of Social and Cultural Studies in Education at the University of Alabama “Thinking with Disability Studies,” *Disability Studies Quarterly*, Vol. 34, Nol. 2, 2014, <http://dsq-sds.org/article/view/4248/3587>)

As I pause in the writing of this essay and pay attention to the larger world that extends both within and beyond the boundaries of the United States of America, I am confronted by the unrelenting production of disability on a daily basis. The historical legacy of the actual act of colonizing an inhabited continent, slavery, indentured labor, Jim Crow laws and the involuntary commitment of indigenous people to boarding schools and reservations has produced physical and mental trauma that has persisted over multiple generations (Spillers, 1982; Smith, 2005; Erevelles, 2011). In contemporary contexts similar practices prevail. In public schools all over the U.S., low income students of color (most notably males), are indiscriminately labeled behaviorally disabled, language disabled, mildly mentally retarded, and emotionally disturbed and are then confined to segregated special education classrooms/alternative schools; often medicated; and punished more harshly than their white counterparts (Artiles et al, 2010) In some inner-city schools, entire classrooms of students (sometimes entire schools) labeled cognitively and behaviorally disabled are quite literally ushered via the school-to-prison pipeline to a lifetime of involuntary institutionalization in the prison industrial complex (Erevelles, in press). Undocumented workers cross the U.S./Mexico border dodging vigilantes, enduring dehydration and other heat-related diseases, and risking rape and sexual molestation to end up as laborers in fruit and vegetable farms, cattle ranches, chicken factories, and formal/informal service work for the lowest wages, unsafe working conditions, and little to no medical care. Toxic industrial and nuclear waste is dumped in rivers and/or buried underground in landfills in low-income rural areas where local residents acquire illnesses and disabilities that persist intergenerationally. Lack of access to affordable healthy food in inner-city neighborhoods, high employment, run-down housing, high crime rates, and inadequate access to medical care has also led to the proliferation of preventable illnesses that result in disabilities. And lest we forget, the everyday indignities of racial profiling, bullying, job discrimination, police brutality, homophobia in the school and in the workplace, domestic violence, and sexual abuse, among so many others also contribute to mental and physical health conditions that can bring one into the disability community.

Colonial occupation and its more contemporary manifestation of neocolonialism have also resulted in the proliferation of disability. The material conditions of colonial rule supported a violent police state to subdue its colonial subjects who rebelled against the oppressive conditions within which they lived. Even after colonial rule was overthrown, interventions by the former colonists in the internal affairs of the new postcolonial states continued to produce disability using the excuse of stemming the tide of communism to orchestrate assassinations, coups, and civil unrest (Erevelles, 2011). Additionally, the now well-established transnational capitalist exploitative machine has enabled capital to flow freely across international borders while at the same time ensuring that labor be confined within the nation states themselves, maintained as a cheap and docile force in obeisance to the dictates of the World Bank and the International Monetary Fund. Many of their mandated economic policies have required the dismantling of the already skeletal economic safety nets in these nation states resulting in large shortages of food, inadequate access to health care, and deplorable living conditions that have continued the proliferation of disability. Global investment in the so-called 'Third World' has resulted in the relocation of multi-national factories from the neo-imperialist north where "third world" laborers in the global south work under sweat shop conditions to produce cheap and affordable goods for consumption by world markets. Just recently, a garment factory burned down in Bangladesh and while the newspaper reporters rushed to count the dead, very little was said about the under-paid women laborers who have undergone amputations, suffered burns, and who are working through post-traumatic stress. As if this kind of human exploitation is not enough, on a regular basis, the United States military deploys drones in Afghanistan and Pakistan that kill and injure civilian populations, the continuation of the U.S. dubbed "War on Terror" initiated via Operation Iraqi Freedom in March 2003 that has generated its own class of casualties of war (dead as well as disabled) that even today have resisted accurate calculation.

This incomplete litany of the global proliferation of disability tentatively signals high noon in disability theorizing. I now sit uneasily amidst questions that lead to seemingly conflicting impasses. What does it mean to come to terms with the transgressive vagaries of queer/crip identity as assemblage—precarious/partial/body-without-organs/liminal/ affective/ molecular—within political economic contexts imbricated in colonial/neocolonial practices of unrelenting social, economic, and militarized violence? Can "lines of flight" (Deleuze & Guattari, 1987) intent on discombobulating the dreary stolidness of the normative subject serve as an effective means of deterritorializing subjectivity from its political-economic constraints? More importantly, what are the political implications of such discursive maneuvers in articulating the shifting bonds of queer/crip communities in global space? What happens if these bonds timidly marshaling transitory notions of community are animated by unequal relations of production and consumption in aid of transnational capitalist accumulation? How do such "toxic animacies" (Chen, 2011) complicate utopian notions of community where the enablement of some bodies is based on the oppressive dis-enablement of other bodies separated and yet connected by the material social relations of transnational capitalism? And most significantly, how would a disability-affirming queer/crip politic (McRuer, 2006; Stevens, 2011; Kafer, 2013) engage the material violence enacted in "becoming disabled?"

In the late afternoon, I watch as a passing shower forces the burning concrete to release a steamy haze and feel the torpid air ready to explode into a strangling humidity. This torpor is at odds with my own apprehension. Is my own work of theorizing disability as a historical materialist construct actually dangerous to a critical disability studies? How does the disability community engage with this rapid (almost incessant) proliferation of disability? Is it impossible to desire disability in these contexts? What are the ethical implications of preventing this proliferation of disability? What does it mean to say "no more disability" for those "becoming" disabled via violence and then compelled to live in deplorable social conditions? And what do these negations mean for disabled people who have struggled valiantly to convince the world at large that living with a disability "is an ingenious way to live" (Marcus, 1993) only to be told, "Enough!"? How does the disability community build alliances with those groups (located at the complex intersections of race, gender, and queer politics) who have historically tried to shake off the "stigma" of ableist notions of disability that have been used to justify their continued marginalization in capitalist economies? As a result, what allegiances do disabled people located at these crossroads of shifting identities have with a largely white middle/upper class disability rights movement in the Global North? When do our passions cohere in our collective struggle against oppressive practices that ultimately discount many of us in terms of our unique as well as collective humanity? And when does the complicated intertwining of our disparate yet collective histories become so frustratingly dense and depressing that we shrug off these material bonds impatiently to theorize in discursive spaces that celebrate (queer/crip) "desire" unmediated by the social?

#### Antitrust is the bedrock of the fight against capitalism—rejection of the liberatory potential of legal antitrust reform dooms solvency

Zephyr Teachout 20, associate professor of law at Fordham University, 2014 political candidate for governor of New York receiving 34% of the primary vote, *Break ‘Em Up: Recovering Our Freedom from Big Ag, Big Tech, and Big Money,* 2020, e-book not paginated.

For decades, instead, the left has failed to understand the magnitude of the concentration problem, how it limits freedom in so many areas of life, how it drives inequality and empowers racism. We have focused on petitioning public government to redistribute wealth or provide social services, ignoring the creation of new, private systems of government that run our day-to-day lives. When progressives do fight private power, therefore, we often do so on the terms set by the right, in which one’s role as a consumer is more centrally important than one’s role as a citizen. Our main tool has been naming and shaming with the goal of persuading corporate boardrooms to change behavior, not persuading Congress to act. You’ve heard the phrases: Vote with your feet. Vote with your wallet. You may even have internalized them so completely that you feel guilty when you use Amazon or Uber after protesting their treatment of workers, as if it were hypocritical to demand the destruction of a service you use every day. A wellorganized strategic boycott is a powerful tool, but the degree to which the left has internalized ethical consumerism is frankly dangerous. It means that when a progressive hears about Facebook accepting lies in paid political ads, they think their job is to stop using Facebook, when they should really call their congressmember and demand that she sponsor legislation that would make social media companies liable for paid lies. Because this antipolitical ideology has infiltrated leftist politics, even progressive politicians are rarely asked to address monopoly problems; meanwhile, monopolies are lining the pockets of most Democratic and Republican candidates to make sure they look the other way.

It is a profound project, to reshape our politics and win back our freedom. But we can break these concentrations of power as soon as we set our minds to the task. We already have the tools at our disposal. Using no more than existing statutes, a new president can demand that the FTC and Department of Justice stop mergers, and implement industry-specific anti-monopoly rules across the executive branch. State attorneys general can—and are starting to— investigate big trusts, block mergers, and force divestiture. A new Congress could certainly help to speed the process, by passing laws that overturn decades of bad Supreme Court precedent and return us to the jurisprudence developed prior to 1981, when it was much easier to stop corporate concentration. That same Congress—and statehouses—can pass anti-monopoly laws directly targeting this modern threat.

With a major, grassroots anti-monopoly movement, we can radically reshape our economy and democracy in the service of human needs. We can have affordable drugs. We can have a wide-open seed market that isn’t connected to a fertilizer market. Farmers can reclaim the right to fix their own tractors, and taxi drivers can get a decent wage. We can have an economy where business owners make a profit but aren’t governed by profit maximization. We can have a basic communications infrastructure that doesn’t rely on targeted ads and surveillance. We can even have an economy made up of worker-owned co-ops and unionized corporations, small- and medium-sized businesses, and substantial local ownership, if we so choose. We can have a moral economy. But none of this will happen until we end government by private monopolies.

#### Our alternative is to make pragmatic demands upon the state towards an anti-capitalist project through solidarity-based politics. This approach is necessary to open up space for more radical projects. Their strategy cedes political potential to conservative forces.

Harvey 15—Distinguished Professor of anthropology and geography at the Graduate Center of the City University of New York [David, “Consolidating Power,” *Roar*, Issue #0, p. 16, Fall 2015, https://roarmag.org/magazine/david-harvey-consolidating-power/]

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

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

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

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

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

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

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

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

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

So you believe this would require some form of authority?

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

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

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

More pragmatic in what sense?

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

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

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

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

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

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

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

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

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

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

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

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

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

## Case

### 1NC – Competition

#### We’ll contest their thesis of competition – it’s not antagonist or draining but rather a rejuvanting process of mutual cooperating and striving

Christa Davis Acampora ‘2 “OF DANGEROUS GAMES AND DASTARDLY DEEDS: A TYPOLOGY OF NIETZSCHE'S CONTESTS” International Studies in Philosophy 34:3

Some competitions bring with them entitlements and rewards that are reserved for the sole winner. Nearly all of these can be described as zero-sum games: in order for someone to win, others must lose. Further, if I choose to help you to prepare your dossier for your promotion application for the only available post, I risk reducing my own chances for success. Let's call these kinds of competitions antagonistic ones, in which the competitors are pitted against each other in an environment hostile to cooperation. We can also imagine competitions that are not zero-sum games, in which there is not a limited number of resources. Such contests would allow us to enact some of the original meanings at the root of our words for competition and struggle. The Latin root of compete means "to meet," "to be fitting," and "to strive together toward." The Greek word for struggle, which also applied to games and competitions, is agon (aycJv), which in its original use meant "gathering to- gether."25 Practicing an agonistic model of competition could provide results of shared satisfaction and might enable us to transform competitions for fame and status that inform so much of our lives into competitions for meeting cooperatively and provisionally defined standards of aesthetic and intellectual excellence.26 If we can revive the sense of agon as a gathering together that vivifies the sense of competition that initiates a striving together toward, we can better appreciate the unique relational possibilities of competition. Recalling the definitions of agon and competition provided above, from which I tried to indicate a sense of competition that could facilitate a process of gathering to strive together toward, consider another example. When two runners compete in order to bring out the best performances in each, their own performances be- come inextricably linked. When I run with you, I push you to pull me, I leap ahead and call you to join me. When you run faster, I respond to your advance not by wishing you would run slower or that you might fall so that I could surge ahead. I do not view your success as a personal affront, rather I respond to it as a call to join you in the pursuit. When in the course of running with me, you draw from me the best of which I am capable, our performances serve as the measure of the strength in both of us. Neither achievement finds its meaning outside of the context in which we created it. When two (or more) compete in order to inspire each other, to strive together toward, the gathering they create, their agon, creates a space in which the meaning of their achievements are gathered. When your excellent performance draws mine out of me, together we potentially unlock the possibilities in each. For this we can certainly be deeply indebted to each other. At the same time, we come to understand and appreciate ourselves and our own possibilities in a new way.27 Furthermore, this way of coming to understand and appreciate our difference(s), and of recognizing perhaps their interdependence, might be preferable, to other ways in which differences might be determined. Although surely not appropriate in all circumstances, agonistic endeavors can provide an arena for devising a more flexible and creative way of measuring excellence than by comparison with some rigid and externally-imposed rule.28 Agonism is not the only productive way of relating to each other, and we can certainly play in ways that are not agonistic, but I do think such an ethos of agonism is compatible with recognition of both the vulnerability of the other and one's dependence upon others for one's own identity. It incorporates aggression, instructive resistance, as well as cooperation, and it is compatible with the practice of generosity. It cultivates senses of yearning and desire that do not necessarily have destructive ends. It requires us to conceive of liberation as something more than freedom from the constraints of others and the community, but as a kind of freedom-buttressed with active sup- port-to be a participant in the definition and perpetual recreation of the values, beliefs, and practices of the communities of which one is apart. That participation might entail provisional restraints, limitations, and norms that mark out the arenas in which such recreations occur. At his best, 1 think Nietzsche envisions a similar form for the agonistic life. Competitive "striving together toward" can be a difficult condition to create and a fragile one to maintain. It requires the creation of a common ground from which participants can interact. It needs a clearly defined goal that is appropriately demanding of those who participate. It requires that the goal and the acceptable means of achieving it are cooperatively defined and clearly articulated, and yet it must allow for creativity within those rules. It demands systematic support to cultivate future participants. And it must have some kind of mechanism for keeping the competition open so that future play can be anticipated. When any one of the required elements is disrupted, the competition can deteriorate into alternative and non- productive modes of competition and destructive forms of striving. But when an agonistic contest is realized, it creates enormous opportunities for creative self-expression, for the formation of individual and communal identity, for acquiring self-esteem and mutual admiration, and for achieving individual as well as corporate goals. It is one of the possibilities that lie not only beyond good and evil but also beyond the cowardly and barbarous.29

### 1NC—Antiturst

#### This is also true of antitrust law - The purpose of antitrust law is not to promote rational, bounded subjects, but rather to allocate coordination rights over the economy. This fundamental goal makes antitrust the lynchpin of economic organization, and a necessary component of any anti-neoliberal politics.

Marshall Steinbaum et al 20, Assistant Professor of Economics at the University of Utah, Left Anchor, podcast episode 155: “Socialism vs. Antitrust with Marshall Steinbaum,” 9/12/20, transcribed by Otter, https://leftanchor.podbean.com/e/episode-155-socialism-vs-antitrust-with-marshall-steinbaum/

Marshall Steinbaum 31:39

But yeah, I mean, there's a kind of what you were saying, I definitely agree with that, I guess I would push back a little bit on the kind of interpretation of the states moving away. And so like, the only thing that matters is what whether Tim Cook allows Uber to make a living, as opposed to whether, you know, the taxing authorities of every city and their state labor departments and the FTC FTC have a say on it. Like they're, they're, you know, small potatoes in comparison to the CEO of some company. I think I mean, that's true about, you know, who wields power in the economy. But it's not right to say that that's because the state has retreated and sort of ceded all control to, to the capitalist, I think we have to understand the state's involvement or policies involvement as being, you know, kind of inescapable. So the question is like, okay, so you've got, you know, like, incorporation statutes, like who's allowed to be a company to enjoy limited liability or whatever, like, people don't think of that as being part of economic policy. But it absolutely is not just, you know, is Apple allowed to be a corporation or not a corporation as, as you know, say it's a California Corporation? I mean, it's probably a Delaware Corporation, but whatever, you know, can it operate across state lines? You know, these were big issues in the 19th century. Nowadays, we get things like, oh, if you're a corporation, then basically anything you want to do is legal under the antitrust laws, you know, but people who are not corporations cannot act together under the antitrust laws. So for example, you know, you're talking about like, oh, Uber could be liable under antitrust for this gigantic price fixing conspiracy. Through, executed through verticals restraints, yes. You know, who has actually been found to be liable under the antitrust laws? Uber drivers for potentially collectively bargaining their wages against Uber. So that it's this idea that like, Oh, you know, these individual drivers, like they're independent businesses operating on this neutral platform, but they can't get together. That's what the antitrust laws forbid. Whereas this one gigantic corporation that dominates them that is absolutely allowed to do whatever it wants. So this is the kind of concept that my my colleague and collaborator Sanjukta Paul is called the allocator, antitrust is an allocator of coordination rights and the title of her paper. This idea is like, who's allowed to coordinate economic activity? Is it it, and what she says is that antitrust has what's called the firm exemption. So here she's drawing on what what, you know, most every antitrust person recognizes and is known in the jurisprudence is the labor exemption, which is that labor unions bargaining wages within a recognized bargaining framework cannot violate the antitrust law through that collective bargaining. So that the idea is that's an exemption to antitrust's usual, preference for competition. What she says is, you know, we have to reinterpret that as being, as there being a firm exemption to antitrust, which is Uber telling everybody what to do, that has an exemption from antitrust law by virtue of the fact that Uber is a corporation and or the way that we have chosen to allocate coordination rights in her framework is to allow Uber to coordinate entire markets in the case of Apple to allow Apple to determine what is presented on its on its app store and you know, it has, you know, pretty, you know, strong representation in the retail smartphone market. So it's like okay, you know, Uber is probably going for relative upscale clientele, they all have iPhones, if it can't get on the iPad, if it can't get on the App Store can't get on the iPhone. And if you can't get on the iPhone, they have no business. You know, that is the allocation of coordination rights over that market to Apple, as opposed to some other mechanism for allocating coordination rights. And this is where, you know, to get back to what we were talking about earlier, anti monopolist framework would say, you know, there's no reason why Apple gets to be the one who decides who sees what, why don't we potentially, you know, in a kind of Co Op context, give, give that right to, you know, a consortium or, you know, quote unquote, union of app developers, or in the case of, say, ride sharing, like, why don't we have a union of taxi drivers, and they determine, you know, who gets who gets matched with which customer and what the fare is, as opposed to the company determining that

Alexi 35:48

this is so important, and I think it's really worth emphasizing, you know, the point about how jurisprudence and an antitrust enforcement does what she said, and so far as it, it chooses sides, and who can coordinate these things and who's autonomous and who has power. And since we're speaking of Apple, maybe you can talk a bit about how sanitation workers right at Kodak, Kodak back in the 80s had more power to coordinate and kind of exert their their power over sanitation workers at Apple, right in contemporary times, and then you write about how that is kind of an example of, you know, how the separation of workers from lead firms is kind of a simultaneous erosion of the in the jurisprudence of the Sherman act prohibitions on vertical restraints. So, yeah, maybe talk even a bit more about about the importance of this.

Marshall Steinbaum 36:40

Yeah, so that's getting to what a great economist David Weil has called the fissured workplace. And I think you're referring specifically to a article that was published, I think, by Neil Irwin, if I recall, correctly, in the New York Times, a couple years ago, that was profiling two specific people, one of whom had been kind of janitorial worker on payroll at Kodak in the early 80s. And like, she had basically benefited from their, you know, corporate policies that included incentives to like go to community college and get credentials. And so she got qualified as I you know, sort of IT person, she was like, trained on Lotus 123, or something from the, you know, from the dark history of personal computing. You know, she kind of worked her way up through the ranks at Kodak, thanks to the fact that she started in the ranks of Kodak that is that she was a janitorial worker on the payroll, she was able to be promoted, basically, to the point of being the head of it for the entire company at some at one point. So she was a senior executive, you know, and that kind of social mobility via the mechanism of a major economy leading firm that employs people kind of every stratum of the occupational hierarchy of the income hierarchy, and is itself a like, somewhat egalitarian organization in its own right. I mean, insofar as any corporation could be egalitarian within capitalism, you know, I think this is kind of what Wynand was talking about, when he referred to, you know, this sort of New Deal state that was created by the National Labor Relations Act and other other, you know, kind of New Deal reforms, it's like that, that kind of somewhat egalitarian corporate organization is, you know, a thing of the past. And my argument would be well, it's and it's the erosion of antitrust that made that not the case. So in the instance of Apple, the contrary, the contrasting individual was, you know, janitorial services worker who was contracted, so she was employed by some, you know, janitorial services contractor whom Apple contracted with to clean its offices, but like, there's no way that she's ever going to be promoted to be an employee of Apple, let alone a senior executive at Apple, you know, nowadays, Apple is one of the economies leading firms. So there's different, you know, just, you know, take and both firms are like, somewhat are considered somewhat technologically innovative in their time. So like, think of these, you know, kind of economy leading like blue chip companies that are that like defined the apex of the American economy in two different eras. One of them is constructed such that it's possible for a janitor to eventually become a senior executive, the other is constructed so as to make that impossible at all costs. And and and, you know, I think Irwin's piece gets exactly at this question of employment classification as being a crucial constituent of that changing reality. I would say that the ability to contract everything out and yet control everything so minutely use a, you know, arms legally at arm's length, but like economically, you know, at a very close distance and with total control to the boss, you know, that is we have to understand the erosion of antitrust is being just as much a part of that as the non enforcement of labor laws, the erosion of of enforcement of those and so on.

Ryan Cooper 39:59

Yeah, Yeah, that's that's a great dichotomy. I wanted to also, I wanted to bring up the the welfare state. I n, in, in a couple of these articles, you've mentioned how, you know, the gig economy and various sort of like, anti trust, you know, trying to escape any kind of liability for, for being responsible for one's, you know, employees has materially harmed workers by sort of excluding them from, you know, like traditional welfare state stuff, which is often administered through, you know, through the employment relation. But you've you've also written about how, like the cares act, part, partly helped with that, and then partly maybe, sort of entrenched the bad relationship. But, you know, in general, the cares act was like a pretty astounding piece. I mean, it's seems mostly expired now. But, like, it was a really interesting piece of legislative legislation that, that helped people out a lot and kind of revealed a lot of underlying, you know, deficiencies in the way that people in DC have done policy for the last like, 40 years. So can you can you kind of go through, like, the how the welfare state interacts with, you know, anti trust, and and, you know, kind of kind of how the two can can complement each other? And how they that might be fixed?

Marshall Steinbaum 41:41

Yeah, absolutely. So,we've been talking a lot about this question of the legal employment relationship, and why that matters so much for workers. And a big reason why it matters so much is exactly as you said, that so much of our welfare state is conditioned on employment. And so that's what you know. So in some sense, this like category, that's kind of, you know, not the main focus of attention at the time of the New Deal. You're that this distinction, the question of like employment independent contractor, and that is an important distinction, as I was referring to in the antitrust cases that we talked about earlier. But like, this idea that, you know, a lot matters for you economically, on the question of whether you are legally an employee or not, that's not true to the New Deal era, per se, it's that's what's been layered on since and especially since we kind of adopted the backlash to the Great Society view that the problem with the welfare state is that it causes people not to work and inculcates a culture of poverty. You know, all of that is basically racist drivel. But it's had an enormous impact on the kind of Orthodoxy around welfare policy, especially in DC. So as I've talked about, either of I've talked about in this podcast, certainly a couple of times on podcasts with bruenig. And in some other writings, you know, there's this sort of mania for the Earned Income Tax Credit among DC policy wonk types, which is this, basically wage subsidy for people who were employed in market labor, and it doesn't help you if you're not employed in market labor, and arguably, it hurts you, even if you are employed to market labor, and you don't receive it, because it by causing people to, you know, as sort of have to be employed to market labor in order to gain the benefit and arguably depresses wages for people who aren't beneficiaries, so reduces the market wage, basically. You know, that cares act is kind of by chance, the opposite of that. So first of all, you said that the cares act was like this revolutionary thing. It was that with respect to that unemployment insurance position, provision, so called pandemic unemployment compensation, and then pandemic unemployment assistance, we'll get to what those two things are in a second, the rest of the cares act for you know, it also included a, you know, sort of like one off $1200 check from the IRS, you know, for people earning about, I guess, it was like below 100,000 a year. And then there was like, a ton of stuff that was basically an indefinite extension of a whole, like firehose of money to, you know, the economy's leading corporations via the Federal Reserve and the Treasury. But I think, especially the Federal Reserve, so you're saying it's, like, mostly expired now? Well, not the part that gave capital, everything they want it that part's not expired, and that's exactly why the other part hasn't been renewed. So there was a sense, you know, the kind of political calculus that gave rise to the cares act is like, you know, we have like, suddenly a pandemic has hit the economy, it's going to be temporary, you know, so we need to, like, we need something to tie people over, let's juice up the unemployment insurance system, give people $1200 checks. And make sure all these businesses are able to borrow, you know, that are facing, you know, huge sudden shortfalls. It's like, oh, but you know, by the way, the last of those things that will be permanent, the first of those things will be temporary, because the pandemic is assumed to be temporary, and oh, wait, the pandemic is not temporary, or at least it's less temporary than we thought it was gonna be. You know, those people are suddenly high and dry because capitalists already got everything they wanted. So it's like we're in a pretty shitty situation, frankly, visa for pretty much all working people, but the stock market's doing great. Okay, so what did the cares act have for unemployment insurance? And why is that such a challenge to kind of policy received wisdom, it basically added this lump. So the PUC part, pandemic unemployment compensation added a lump sum $600 per week, on to traditionally eligible workers for unemployment. So that's PUC so if you're eligible for unemployment, there's some state formula that says that's a function of what your wages were pre layoff. You know, generally as as the lingo and unemployment insurance is replacement rates, so it's how much of your loss of your lost wages are, quote, replaced by unemployment insurance, you know, the average in the United States for people who are eligible is something like 50%. And like 50% of unemployed people aren't eligible or was not able to collect it, you know, very, like leaky sieve type system, that P You see, element of the cares act up to that number by whatever the replacement rate was under state law plus $600, which for a lot of workers is basically, you know, a gigantic windfall relative to the shittiness of the jobs that they actually have to do. So many workers, especially in low wage occupations experienced, you know, better pay when they were receiving the PVC than they did in their jobs and that they're ever likely to get in their jobs. PUA was the version of that for the gig economy. Basically, it was for workers who were not eligible for traditional unemployment insurance. And many gig economy workers were dis employed by the pandemic, this was a fully federal system that essentially gave them access to a temporary pool of unemployment insurance. And the key thing there is at the time, I wrote a letter with Sen. jepto, whom I mentioned earlier, I wrote a letter to Congress about that they have basically done a kind of ex post bailout of the of all of the misclassification that gig economy firms have been doing for a decade now. Because they're saying, Oh, you know, Uber has never paid a dime in unemployment insurance premiums for its workers, and they become unemployed all the time. Suddenly, in this pandemic, many of those workers are eligible for unemployment insurance, thanks to PUA. So that's great that they're, you know, able to subsist, but instead of paying into it, you know, Uber gets to skate for 10 years on its premiums, and then the federal government pays for that. So that was, you know, kind of, you know, a, under the radar screen bailout of the gig economy, employers. Anyway, now, you know, we're in this position where these things have been taken away, and what that has meant, you know, so the interesting thing that's come out in the economics research about the effect of the cares act, and specifically these UI provisions, is that, you know, that pandemic is and has been devastating to the low wage workforce, huge, extreme spike in unemployment, it's still very high, you know, a lot of service workers have been disappointed. But actually poverty rates went down, and earnings went up, or income went up, because their income was more than replaced by these temporary, generous provisions that were not conditional on showing up for work, because they couldn't be conditional on showing up for work, the whole point of the pandemic is that people can do their work, you know, now, you know, and, you know, given that like that, like, in the midst of an economic catastrophe, we reduce the poverty rate, you know, that like flies in the face of everything that we know about how the poverty, you know, the poverty rate usually goes up when there's an economic recession. And what we just found out is like, if you don't want that to happen, if you do want to reduce poverty, you have to enact these policies that aren't conditional on work. That's how you reduce policy, you give people money, basically, and in this case, unemployed people are the people who are likely to be dev low income to be in poverty. So that's how you get money to. So now, you know, we're kind of I mean, because of this political misjudgment that had, you know, given capital, everything and wanted while workers bailouts was temporary, you know, now it's like, Okay, well, like, please give us something for workers. You know, I think the the view had been that, like the election would be the leverage that, you know, pro worker interests would have over the federal political system, but that's not the case, actually, because the outcomes of elections aren't terribly responsive to the the well being of the population, which is a big problem that we should probably do something about at some point. But But, you know, so now it's like, Okay, well, we're sort of like pleading for scraps the way that we have been for the last decades, and everyone's reverted to, you know, basically versions of the EITC expansions that have been on their, you know, to do list for for a long time. So it's like, okay, you know, the wanks have guy kind of gotten back control in control of the message and the asks and whatever. And, you know, consequently, the agenda has gotten shittier.

Alexi 49:39

never a good idea to give the Wong's power. But now, like so far, I just want to recap for the audience. We have number one left anchor Steinbaum, synthesis of anti trust and democratic socialism, to new idea breaking news, let's make government responsive to the needs of the people. That's that's that's what we've so these two important things that we're offering now. But But no, I think first of all the point point very well taken that, you know, our favorite game about the Democrats, is it malfeasance and or is it malice? You know, is it is it just, you know, bad politics or or is it just intentional, you know, slap in the face to the working people of this country into the poor. So, so yeah, yeah, point point well taken that the the corporations were given a, you know, indefinite Lifeline, and then I think they accidentally helped the poor and helped the working class, probably because they didn't realize how low pain, you know, jobs were out there. Yeah.

Marshall Steinbaum 50:39

Yeah. I mean, that's exactly right. It was pretty clear at the time that like, there was just sort of No, I mean, I think the rhetoric in Washington is like, somewhat responsive to, you know, insofar as there's any responsiveness to workers, it's like, you know, people who are not precariously employed. So, you know, that I, you know, so it's like they don't it's like any job is a good job, or they are not, that's a little bit of an overstatement. But it's like, you know, what we want to prevent as people losing their jobs, as long as they have their a job, there'll be fine. And, you know, there's just a very, very little apprehension on the part of like, the policy elite of like, just how bad most jobs

Alexi 51:18

but look, Marshall, we all know, worst case scenario, as Mitt Romney said back in the day, if you're really in a tough situation, just sell your stocks if you have to just

Marshall Steinbaum 51:28

Yes, yeah, yeah, right. Right. Just that Yeah, Dad stock at American Motors or whatever, you know, what you can afford? Right? I

Ryan Cooper 51:33

mean, it was a tough thing to have to do. But sometimes you got to just bootstrap it.

Marshall Steinbaum 51:40

Yeah, so well, you know, now now, Romney is a resistance hero. He's doing everything he can to bring our Trump Reign of Terror to an end

Ryan Cooper 51:47

he is, thank thank God for him, honestly. Yeah, so so to, I guess, to kind of like, like, tie a tie that together a little bit. You know, like, the welfare state is, you know, just like a critical lifeline. You know, like the cares act shows, you know, that, that, that four decades of neoliberalism was all bullshit, actually, we could solve poverty quickly and easily, just by, you know, dumping money on people who don't have money. That's literally It's that easy. But I think, you know, the interesting thing to me about, like, this whole discussion about, like market regulation, and so on and so forth, is that, like, I'm pretty convinced that the, you know, in so far as your, the economy is based to some degree around, you know, private businesses, you know, doing their thing, competition is a is a fairly useful tool, if it's done, right. And that means competition, that's that that happens, you know, through a sort of regulated process, because you can have competition that just means trying to cheat, and like drive the other guy out of business, so you can seize more market share, you know, try and try to force companies to compete on price and quality. And that means big government, basically. You know, an example I've seen recently, you know, the computer chip market for for like desktop PCs. That's like a pretty concentrated market. But there is competition there between AMD and Intel. And Intel's had like a big chunk of you know, the marketplace for for many years, AMD has been sort of a laggard for the last couple years AMD like they basically just beat Intel, it's better, better chips for cheaper. And suddenly Intel's on the backfoot. And they're doing all this stuff, they're retooling their, their machine to try to sort of, like, exceed, and like, that, I think is a reasonable process, so long as it's not, you know, like, you don't you don't end up with competition that takes place like, okay, we're shipping all of our, you know, all of our factories to Tanzania, and we're just gonna pay everyone $1 you know, make them buy all their stuff in company script, that kind of competition. But, you know, and then also, you could, you could say, like, oh, we're going to set up something like the post office as explicitly a monopoly, but it's going to be a monopoly with a sort of government policy purpose, like everybody has to get the same service for the same price even if it's like ridiculously uneconomical to provide it in a certain location. And that's like a kind of different that's like about quality government and how do you set up a agency with some sort of a spirit a core that like, does a good job. But like, I think the, you know, my sort of like fundamental takeaway, and maybe you can sort of quibble with this or qualify, Marshall is that like, like, the anti trust, and, you know, breaking up, like, like full on monopolies and like forcing the businesses to compete decently and, you know, the sort of like welfare state, you know, social democratic vision, these things like there are two, they can be two great tastes that taste great together. And, you know, like, there's not necessarily a trade off. And then like, one could sort of enable the other. What do you think?

Marshall Steinbaum 55:40

Yeah, I mean, I think that you can have a, you know, what might be called Race to the Top type of competition, I'm not exactly sure what's going on in the, you know, desktop computer chip market, but like, branding, what you the way you characterized it, or you can have race to the bottom competition, which is basically about sort of chiseling out your company's own regulatory arbitrage, or like, You're the one who gets to run the taxi company, but not actually charge the regulated rate, or you're the one who locates the factory in Tanzania so that you can pollute all you want and pay your workers like crap. And then you know, then you're in, you know, quote, unquote, competition with domestic producers, you know, who are then obviously incentivized to do the same themselves, I have tended to move away from the concept of competition, exactly, in some ways, exactly. For the reason that you're saying it. And for the reasons I just said, which is that it is not, it doesn't really work as like, we want more of it, or we want less of it, because there's different forms of it, as we were just saying, Yeah, and, you know, in particular, I have moved away from that concept of competition vis a vis antitrust law, like I just don't agree, now, now I have come to the view that I don't agree that the purpose of the antitrust laws is to promote competition. I think it is because, you know, for the reasons like that the world in which, you know, a US domestic manufacturer relocates overseas to take advantage of poor environmental and labor standards, you know, that's like, an act, you know, that could be understood as an anti competitive act vis a vis the workers, but like a pro competitive act vis a vis competitors, potentially. And so I don't think like it's, you know, a policy regime that gives workers that gives companies the ability to undercut their own workers through the threat of outsourcing isn't about promoting competition or repeating competition, it's about, you know, who gets to decide and the economy who has power, as Sanjukta said, who, to whom are coordination rights granted. And so my view is like, antitrust has one disposition of the allocation of coordination rights or, you know, who gets to operate as a monopoly or as a dominant firm versus who is subjected to their domination, which is designed subjected to competition under the current way of doing things that would be workers, so like, a dominant employer, you know, subjects workers to competition, so the workers have plenty of competition, and that's what reduces their labor standards. And I think that is exactly what is kind of tripped up or created this false dichotomy between like, anti monopoly ism versus socialism, because from a workers perspective, more competition is bad. Because they, you know, that's exactly what the economy already consists of, whereas from a, you know, sort of corporate perspective, you know, exactly what characterizes the economy is a lack of competition, that is to say, you know, dominance, not just in any one market, you know, where, you know, many major industries are basically, you know, an oligopoly if not a monopoly, and then, you know, vertical integration and vertical control, you know, that subjects, disadvantage actors to competitive forces and insulates powerful actors from those competitive forces. And what we want is the erosion of the concentration of power, which is to say, to, at least, you know, through the mechanism of competition that would be to subject powerful actors to competitive forces and protect unpowerful actors from them.

Ryan Cooper 59:00

Well, well said. Go ahead. I was gonna just do a just out of left field kind of question about, because it seems like non domination seems to be the maybe the principle that would kind of work through the synthesis of democratic socialism and the antitrust, kind of coalitional movement. And what do you think? How would you understand that principle, working with other ideas that the left is is kind of fighting over whether it's job guarantee or UBI? You know, how do you think this overall leftist synthesis should think through what principles can help us kind of navigate these contests or which policies to to kind of fight over and propose as the most important to push for?

Marshall Steinbaum 59:48

Yeah, well, I absolutely do think that non domination is the principle that's at play here. And that's why I support both UBI a job guarantee and I don't believe that there needs to be a clash between those two things. I mean, I have often thought and if I, you know, had a vast research budget of my command, I would indeed, commission this, you know that there should be a sort of left pro labor like pro low wage labor agenda that consists of a UBI, like the cares act, except not just for unemployed people, but including them, a job guarantee, which is to save full employment, you know, macroeconomic commitment to full employment, and a $15, minimum wage, as well as the enforcement of other labor standards, like maximum hours, and, you know, safe workplaces and that sort of thing. All of those things together to me form like the tripartite are the three legs of the stool of like a, you know, pro labor left agenda as against the EITC. And basically anything that's conditional on supply, market labor for in order to receive benefits. So like all three of the things I mentioned, what characterizes them is rights, and entitlements accruing to the worker that's independent of any one employer. And that's all of that is at odds with existing policy orthodoxy, for example, the EITC, the other thing that I have written about a great deal is a student debt and labor market credential is Asian. So I interpret the rise of student debt as being basically the federal government's most ambitious labor market policy of the last few decades, which is the idea that like, oh, if people are earning enough in the labor market, they need more human capital, so they need more higher education, and we'll lend them the money to get that higher education, and then their earnings will go up, like that has, you know, kind of spiraled out of control, because people's earnings haven't gone up. So they're left with a bigger pile of debt than they would have had otherwise, and consequently, aren't paying it off. But like, all the real big reason why the whole, like student debt and Higher Education and Human Capital approach to labor market policy hasn't worked, it's because it also doesn't take into account employer power and the domination, that bosses are able to exercise over workers in a capitalist economy. So what the effect of that, you know, student debt thing in the labor market has been to basically shift the cost of training or being trained for your job or qualified for your job to individuals from employers or from, you know, the public higher education system, you know, these, this is just the transfer of those costs to the shoulders of the agent that's like least able to shoulder them.

#### Emperics go negative - Antitrust law can either ossify OR counter systemic racism and economic inequality. Its path depends on changing legal enforcement.

John Mark Newman 21, Professor at University of Miami School of Law, “Racist Antitrust, Antiracist Antitrust,” The Antitrust Bulletin, 1–12, 2021.

The United States is slowly rediscovering politics. A decade-long experiment in laissez-faire policymaking has failed to correct societal inequities—much the opposite.1 If the tumultuous 2010s yielded one consistent theme, it is frustration with inequality coalescing into collective action.2 Multiple progressive political movements arose, each in its own way a response to the persistent effects of systemic inequality. Each is a call to wake up to the reality of how power has been apportioned and used—and, all too often, malapportioned and misused.

One might think antitrust law would have something to say about all of this. The earliest antitrust statutes were enacted during the late 1800s, at the height of the first Gilded Age of inequality in the United States.3 A broad-based coalition of workers and independent farmers, frustrated by the rapid consolidation of economic power in railroads, steel, and a host of other sectors, decided to push back. Their crowning achievement was the Sherman Act of 1890.4

Although various stakeholders have long disagreed about its goals, antitrust law is by its nature a tool for allocating and reallocating power.5 Enforcers and commentators have recently begun to respond to contemporary political movements by raising the possibility of using antitrust as a partial means of redress for systemic racism and economic inequality. Commissioner Slaughter suggests consciously incorporating racial inequity into enforcement prioritization decisions.6 That, in turn, could translate into a more active role for antitrust in blocking mergers and acquisitions and other business conduct.7 Conversely, Vaheesan calls for antitrust enforcers to stop intervening on behalf of powerful employers against workers, especially when those workers are disproportionately people of color.8

This essay attempts a modest contribution to this nascent body of commentary on antiracist antitrust.9 It does so by historicizing a pair of cases, one well-known, the other less so. This “compare and contrast” methodology is used frequently in antitrust discourse. When discussing antitrust’s goals, for example, two cases—United States v. Topco and Reiter v. Sonotone—are often presented as bookends for the 1970s. In his opinion for the majority in Topco, Justice Thurgood Marshall described the Sherman Act as “the Magna Carta of free enterprise, ... as important to the preservation of economic freedom ... as the Bill of Rights is to the protection of our fundamental personal freedoms.”10 By decade’s end, the Supreme Court’s tone had changed considerably—in 1979, the Reiter Court referred to the Sherman Act as a relatively humble “consumer welfare prescription.”11

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 burn a boat and later a cross.26

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 Kirk 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-trustlaws” 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 treatment.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.4

B. FTC v. SCTLA

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.”4 Buchanan was, according to Miller, one of his chief intellectual influences in the field of economics.47 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. Government— ostensibly 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. AmEx

These bookends of the 1980s—Knights of the KKK and Superior Court Trial Lawyers—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, andMasterCard.71The 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 externality 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 construct— market 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 modern 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’eˆtre91—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 onthe “horizontal versus vertical” distinction. Some horizontal restraints are harmful, but not every horizontal agreement deserves hasty condemnation. The SCTLAmajority 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 articles101 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 of color106—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.

### 1NC – Care Work

#### Care work expands the demands of labor, creates subjective determinations of community and prevents solidarity which upends intersubjective community building

Connor 20 (Cameron Norbu Attwood Conner, organizer with the Industrial Areas Foundation based in Dallas, Caring in the Commons: Exploring the Promise and Peril of Building a Community-Based Political Economy, A thesis submitted in partial fulfillment of the requirements for graduation with Honors in Politics, https://books.google.com/books/about/Caring\_in\_the\_Commons.html?id=yFOszQEACAAJ)

2. Identifying the Origins of Exclusion in the Commons

There are many examples of care-based commons. Often, these communities are formed by those who fall through the cracks or are blatantly rejected by broader social welfare systems. Where state and market are unable to provide the basic tools for survival, people come together to address these issues collectively through commoning. This section unpacks how one woman created a system to sustain and spread incredibly intimate networks of care for those, including herself, who would have been unable to survive without them. Viewed as a manifestation of the commons, this story and others like it clearly demonstrate the incredible power of the commons, but they also reveal its inherent flaws and capacity to harm. By narrating that capacity here, following sections will be able to illuminate why exactly exclusion is so persistent in the commons and what variables must be present for harm to result.

2.1 “Community is not a magic unicorn”

Dr. Loree Erickson was one of the first to pioneer a system called “care collectives.” As an activist, she has spent years helping others navigate and establish their own systems of “mutual aid” that rely upon communal networks of care to ensure that individuals with temporary or permanent disabilities can receive the support they need. More broadly, her focus is on “the intersections of radical queer, disability and sex/uality, bringing together personal experience, creativity, and theory to explore issues of explicit sexual representation, embodiment, and desirability.” 42 From a young age, Dr. Erickson used a wheelchair to aid with mobility and required help with her personal care needs— “fancy words for getting into/out of bed and going to use the bathroom” as she puts it. 43 While living in Virginia as an artist/activist in her mid-twenties, Erickson received money from the state to support her and help pay for care needs. The amount of money, however, was so little that she was unable to pay caregivers even minimum wage. When she could afford support, attendants were often ill trained and actively homophobic. Refusing to accept this inadequate assistance of the state, and unable to procure better through the market, Dr. Erickson set about pioneering an alternative survival strategy.44 Calling together her community, she decided to experiment with creating a new collective, friend-made care system. Consisting of disabled and non-disabled friends as well as other community members, this “care collective” resulted in a vibrant and reciprocal system of shifts and schedules that helped with dressing, bathing, and transferring.45 Though she is no longer a resident of Virginia, Dr. Erickson continues to rely on the collective model in Toronto because she isn’t a Canadian permanent resident and so cannot access state resources. Buoyed by her system of mutual aid, Dr. Erickson has continued her activism while pursuing a PhD in Environmental Studies. But Loree’s care collective is not just a personal survival strategy. While she receives care, Dr. Erickson also helps coordinate the care of others in return. Since moving to Toronto, she helped initiate numerous other care collectives, organizing communities throughout both the United States and Canada to share and reciprocate care as needed. In addition, while Loree’s need for access care is posited as a necessity, it is also “the chance to build community, hang out with Loree, and have fun.”46 In this sense, Dr. Erickson plays the role of “emotional caregiver” for those who spend time with her, blurring the distinction between care provision and care acceptance by engaging in relations of mutualdependence. This network of support allows Dr. Erickson to act as a community organizer for a wide array of issues while also cultivating sights of political action and traveling to lectures and conferences around the country as a leading scholar. When traveling, she reaches out for support in advance, broadening her web of relationships as needed along the way. As part of one such trip, Dr. Erickson wrote the following: Hello lovely people… I arrive in DC Friday, around 1ish and am around until Monday morning. Then I am heading to Richmond until Wednesday eve. I am traveling with a friend who can help out with some of my care, but I am in need of friendly recruits as well. Plus, it’s an awesome opportunity to meet fabulous and friendly people/see friends I [haven’t] seen in too long!47 In the relationships it has allowed her to build, the webs of community that have been created, and the lives that have been changed, it is clear Dr. Erickson’s care collective is not only a pragmatic survival strategy. In full, it is a radical revisioning of how care can be provided and accepted, founded in the power of community and mutual obligation. For many in Toronto and beyond, Dr. Erickson’s method of collaborative care has been both “a groundbreaking model for alternative dreams of care making and a place to be brought into disability activism and culture.”48 As it has spread, the concept has transformed according to the specific needs of those individuals that utilize it, but its central principles of reciprocity, collective ownership, and relationship-based organizing have remained. This practice has saved lives while transforming what it means to care and be cared for. Rather than a chore, care (given and received) is posited as something people both need and deserve—while also being an opportunity to have fun and build community. It is needed in the sense that no individual can survive without it, and deserved because no one should be deprived of it, just as no one should be deprived of any other life-giving substance. The care collective forces one to physically confront these facts. As activist/writer Jennie Duguay engaged with her own care collective, she noticed that “Previously abstract concepts like “mutuality” and “interdependence” develop embodied meaning with people as they learn, in a sense, to “see through” the myth of independence, the value system assigned to certain labors over others, the ways ableism defines what is “able”/“normal” and what isn’t—all while chopping veggies or cleaning.”49 Life sustaining relationships of care clearly illuminate the interdependence of individuals within a community. Viewed as a manifestation of the commons, Dr. Erickson’s story and her model of the care collective simultaneously embody all that is revolutionary about the concept as well as its largest flaws. While Loree has managed to create transformative communities that rely on the power of collective action and reciprocal caring, her method also demonstrates the undeniable role exclusion plays in cultivating such community. More specifically, her narrative illuminates two premises of exclusion in the commons that are central to my argument: that commons are based on community and that in creating this community there lies the capacity for exclusion. Let us unpack these one at a time. 2.2 The Commons as Community My argument in the following two pages is simple: the commons’ history of exclusion stems from its inherent reliance on community. From the original CPR style commons that Ostrom first studied to today’s proliferating digital commons and Dr. Loree Erickson’s care collectives, a foundation of community provides the trust needed for sustainable practices of collective self-governance to emerge. As with almost any commons, Dr. Erickson’s collaborative web of care was successful in part because of an emphasis on decentralized governance and collective accountability—factors that are contingent on a healthy community dynamic. Erickson was able to further her own wellbeing by relying on those who knew her best and accepted her sexuality rather than resorting to the inadequate or simply nonexistent assistance provided by the state. In this sense, commons operate according to the principle of subsidiarity, the idea “that decentralized, small-scale solutions, should as far as possible be a default option.”50 Simultaneously, collective accountability ensured that she had security in this care because it was not offered as charity, but instead as one transaction within a system of collective reciprocity. As these two elements suggest, the appeal of the commons lies in its ability to address complex issues, aspirations, or conflicts with local, intimate, and experienced knowledge. This approach is particularly appealing when placed in contrast to presumptive and top-down state policies or profit maximizing market solutions. Rather, as Andrea Nightingale notes “Commoning emerges from, and creates, emotional ties to place, community, resources/non-humans” which strengthens loyalty and interdependency (emphasis added).51 This is why commons are naturally pluralistic and diverse, for these ties will vary according to local context, patterns, and relationships. To use a simple natural resource analogy provided by David Bollier: the commons works “because people come to know and experience the management of a resource in its unique aspects. They come to depend on each other and love this forest or that lake or that patch of farmland.”52 As a result of this interdependence, individuals hold one another accountable for the stewardship of these resources. The same goes for care collectives. The best care is provided not by attendants hired via the market or assigned by the state, but by those who know the care recipient intimately and can address them and their needs with responsibility and respect. The underlying principle in this practice is that relationships are indispensable, and these relationships are only possible within a strong community. 53 Federici puts this bluntly: “Commons require a community, the principle being ‘No community, no commons.’”54 In short, all that makes the commons an effective means of combatting the overreach of market and state flow from this reliance on community; the commons is thus both dependent on and defined by the community that constitutes it. Yet, as I have noted above, the act of coming together in community is an inherently political one, where the definition of a group will always mean the identification of an outgroup. And, ironically, this factor is at the heart of both what has made the commons such a popular vision, and the deep-set flaw which could lead to its ruin.

2.3 The Capacity for Exclusion

The capacity for exclusion in the commons arises from a community’s intrinsic drive for a common identity. Returning to our definition of community provided in Section II, we can ground this thesis in the belief that community stems from shared virtues and principles exhibited by relationships of “friendship, voluntarism and care.”55 In practice, these qualities serve as a form of commonality which those in the community can jointly hold. These very basic commonalities serve as the beginning of a conversation for otherwise different parties to come together around, engage in, and build a relationship upon. It is as these conversations evolve that the intimate knowledge so fundamental to commoning emerges, and a collective, particular, identity begins to grow. Exclusion thus results from a perceived dissonance between this identity and a subgroup’s apparent deviation from it. Before I develop this logic and transfer its implications to the commons, however, let me first define the term “exclusion” in this context. Notice, to begin, that the boundaries of community as I have depicted them are not impermeable. I do not separate groups in a Walzerian sense, with borders symbolizing a distinct binary between “member” and “foreigner”. Rather, I draw on border scholars Nandita Sharma and Arash Abizadeh, along with care theorists like Eva Feder Kittay to argue that communities—just like individuals—cannot be isolated or bounded entities since they are always-already dependent on others. This is impossible to deny for, as Kittay writes, though conditioned “in fundamentally significant ways by cultural considerations, dependency for humans is as unavoidable as birth and death are for all living organisms.”56 Though I do believe that membranes distinguish communities, that common identity does exist, and that these divides have a tangible impact, I also presuppose that membranes and identities can overlap and transform, existing in a perpetual state of permeation with one another. As such, groups cannot truly engage in the process of self-determination because there is no “self” properly considered. If membership can be said to exist, it is only in a liminal sense. Simply put, the “Other” is an integral part of “our” world and culture.57 Exclusion, therefore, means the willful or structural ignoring of contribution, not the lack of contribution or ejection from a certain zone of belonging. Again the archetypal example of care illustrates this dynamic. No commons is possible without an underlying foundation of care provision and acceptance; yet care—or more specifically, carework—has historically been one of the most exploitative, flexible and invisible forms of labor both in the commons as well as all other political economies. It cannot be said that the inequity and exploitation of these laborers has stemmed from or resulted in their removal from the commons—since care providers clearly play one of the most vital roles needed for its survival. Yet neither are they full and equal participants in the commons. They are thus in limbo, with a distinct claim to membership, but also “excluded” from the practices of decentralized governance and collective accountability that are central to a functioning community. With this definition of exclusion in mind, let’s take one more step and look at how communities develop in order to better grasp why exclusion arises as a natural externality of this process. In order to create the bonds of community, a group must take action to identify and sustain the recognition of some shared identity or “commonality” as I term it. This can manifest through geographic proximity in neighborhood communities, though social beliefs in activism, through kinship in the family, or any number of other anchors. In recognizing this commonality, the group is engaging in the creation of a unique “character” with which to identify. American feminist author, activist, and organizer Charlotte Bunch supports this theory in her writings on diversity and coalitions, plainly stating that “if coalitions are to work, there must be a common cause.”58 This collective goal must be powerful enough to overcome the internal disputes that inevitably arise in any group. I began this section with Dr. Loree Erickson because her story demonstrates that even in some of the most challenging situations, where people have come together to overcome seemingly insurmountable odds, there exists a basic level of common identification that enables and facilitates cooperation. In this case, the commonality is one of the most elementary that commons can be built on: likeability. Even without a shared history, kinship, tradition, or clearly articulated vision—elements that many commons theorists focus on as key catalyzers of community—the necessary bonds of commonality can be created through an affective commitment to the communal character of likeability and the connection it creates. Inversely, therefore, Dr. Erickson’s example also demonstrates how deep the potential for exclusion runs in the process of community building. Were someone in Loree’s situation not to possess her charisma, they may not find the same systems of community support as readily available. Leah Lakshmi Piepzna-Samarasinha states as much in her book Care Work: Dreaming Disability Justice, recognizing that “[Loree’s] collective working relies on her having access to a broad network of friends and acquaintances, a social and activist life where people know her and are interested in helping out, something many people, especially sick, disabled, and mad people, are too isolated to be able to access.”59 Put another way: “I don’t ever want to depend on being liked or loved by the community for the right to shit in my toilet when I want to.”60 Even within the radical concept of care collectives, this demonstrates that there will be some who are more likely to be accepted and embraced because of certain personal qualities. This narrative of exclusion is an extreme example, but it is meant to be. Dr. Erickson’s story demonstrates how exclusion is inherent to community building by showing that, even in the most adverse situations, where community is present, so too is a tie of commonality

3. The Cooptation of Exclusion for Purposes of Oppression

Alone, the commons’ capacity for exclusion is not inherently problematic. As communities change and their membranes expand, contract, and meld together, margins and thus marginalization will not be static. In an environment dominated by root systems of capitalism, racism, and patriarchy, however, these dynamics of exclusion will be coopted and used to institutionalize the oppression and exploitation of non-dominant groups, further concentrating wealth (be it social, economic, material, etc.) among the already privileged. The likelihood is thus that, in such an environment, commons will begin excluding others on far more politically significant factors than “likability.” That is to say, though we are all always-already bound in relationships with the rest of the world, factors like prejudice, privilege, and proximity will inevitably lead to certain relations of commonality being more frequently realized than others. This claim is grounded in the assumption that structural oppression has its roots in the “words, stories and silence” that shape our social world, mold our prejudices, and in turn lead to discrimination. 61 In this framework, prejudice is something all people come to adopt via socialization. It is the attitudes and feelings that influence a learned “prejudgment about another person based on the social group to which that person belongs.”62 Discrimination is therefore the action that comes from prejudice: how people behave towards others based on predetermined stereotypes. All people have prejudice, and all communities discriminate. Not all, however, can enact “oppression.” Oppression means to “hold down” (literally “to press”) and thus can only be carried out by the dominant group since only they have the power to institutionalize their prejudices and patterns of discrimination.63 The critical lens that connects prejudice, discrimination, and oppression provides us with an explanation of 1) why, as communities come together around a shared set of values or principles, they will have a tendency to develop those relationships based on commonalities of “least resistance” and, 2) how the exclusion of the “Other” that results can manifest in harmful systems of oppression. Viewed through the lens, the inherently political nature of community building suggests that commons will have a propensity to arise along racial, class-based, and patriarchal lines because of predetermined and socialized prejudices. Habits of prejudice teach that the Other is something to be feared; it teaches that “‘they’ will hurt us either because they are more powerful or because they want our privileges.”64 While this fear “takes multiple forms depending on where we fit in the various scales of domination, all of us are taught to distrust those who are different.”65 If this claim holds true, and community members are accepted in line with standard dynamics of power, then community building holds a dangerous capacity to concentrate wealth (be it social, economic, etc.) as in-groups form along lines of power and privilege. Where individuals or groups are taught not to identify with one another across social barriers, systemic exclusion will be the result, harming all involved as it reinforces interconnected systems subjugation. Many examples exist of how exclusion in the commons can lead to oppression and harm when coopted. The historical undervaluation and exploitation of care work is a crucial illustration of this fact. Across the world and throughout history, care providers in the commons—often women—have been expected to provide for the needs of others in their community while receiving little reciprocation in return. Indigenous communities in Africa and South America, for example, have for centuries excluded women from the right to participate in assemblies where decisions are made, and women thus “risk seeing their children excluded from access to the land because membership in the commons is established through male lines.”66 Today as well, many commons discriminate in order to concentrate power. Co-housing groups form in order to facilitate a commons like community of reciprocal care and labor but are predominantly created by upper middle class, highly educated, white, liberal, heteronormative families;67 Black churches are often a refuge for people of color who have experienced a great deal of racism within society, but also historically have been spaces that are “homophobic and that uphold heteronormativity within black communities;”68 and neighborhood engagement programs are aimed at coordinating collective action and community voice, yet often form solely around those that have the time, energy, and resources to engage. Where people are taught not to perceive their commonality with certain Others via the socialization of prejudice, commons may only serve to entrench inequalities as individuals gravitate towards those like themselves and form communities along existing lines of discrimination. My argument so far has gone as follows: if commons proliferate according to current theory, they will be formed on the basis of commonalities due to the inherently political nature of community building; given the individual’s vulnerability to socialization these commonalities are, in turn, likely to arise in accordance with dominant prejudices of white supremacy, capitalism, and patriarchy; as commoning communities form, wealth will be shared as commons theory suggests; however, privileged communities will have considerably more wealth to share than others, and as they continue to coalesce, this wealth will be gradually be concentrated as it is ‘reciprocally’ shared only within these new and self-selecting communities. Of course, the inverse is also true: less privileged communities will likewise come together in solidarity and cooperation. This fact should not be overlooked, since communities/commons of care often prove the most vital for vulnerable groups. Where people lack the resources to accomplish or purchase care on their own, they often turn to those around them to provide a form of collective security. This should not change. Dr. Erickson’s care collectives are a perfect example of this practice. To the extent that individuals have come together to create coalitions of common wealth, therefore, the proliferation of commons can be considered a positive process. But, in the end, whatever benefits result will be ~~dwarfed~~ [outweighed]by the cementation of structural inequalities and oppression they produce. To the extent that such divisions form, they will mark the end of the commons. As Federici notes, these types of non-egalitarian relations are corrosive to the commons’ founding principles and serve to “generate inequalities, jealousies, and divisions, providing a temptation for some commoners to cooperate with enclosures.”69 In Section V, I suggest the solution to this seemingly intractable crisis of the commons is based in an argument that the principles of commons theory in fact obligate commoners to expand their practice of reciprocity far beyond their immediate communities. Before attempting to salvage commons theory, however, there are two additional features of the commons that exacerbate these issues and which also deserve note.

3.1 How the Commons Aggravate the Capacity for Oppression

Those who advocate for the commons do so on the premise that, as a political economy, it is uniquely capable of recognizing our inherent and universal dependency on one another. This premise, however, is not enough. Left unchecked, the commons will intensify the harms already inherent to community building for two reasons. First of all, commons theory is premised on intimacy as a tool for self-governance, and second, it does not account for a mechanism of ensuring inclusion and equity across commons. Elaborated upon, this first point simply posits that the very intimacy which allows strong webs of effective interdependence to develop in the commons is not scalable to larger situations. For Elinor Ostrom, the very first of her six design principles for a long enduring and successful commons was drawing “Clearly defined boundaries.”70 Without defined boundaries that are closed to “outsiders,” Ostrom argued that “local [commoners] face the risk that any benefits they produce by their efforts will be reaped by others who have not contributed to those efforts.”71 Though dated, the implications of Ostrom’s arguments are still reflected throughout commons theory. The simple assumption is that, without strong relationships of trust, individuals are unlikely to engage in collective action that may be pirated by one individual rather than contributing to the overall communal good. It is the element of trust that is lost when communities are scaled up, and it is the desire to maintain this trust that incentivizes exclusion. In other words, were Dr. Erickson’s care collective to expand beyond her intimate friends and relatively limited travel acquaintances, those bonds of trust that encourage accountability and ownership would be unable to mature along with the physical practice of mutuality and interdependence. Even though commons rarely exclude by physically expelling people, this principle suggests that commoners will increasingly exclude as communities grow in number by ignoring their contributions so as to maintain relations among the initial group that are as close as possible. If this exclusion occurs according to already entrenched systems of stratification and exploitation, it will exponentially increase the exploitation and oppression of those already discriminated against. The second reason commons theory exacerbates the potential for harmful exclusion is because it has no external means for ensuring that such harmful exclusion does not take place. In the commons theorists largely agree that “there is governance… but no government.”72 This in the sense that there is no large, remote third party, exercising “authority and control over people through laws passed by legislatures, rulings handed down by courts, and policies adopted by various officials and politicians.”73 Rather, governance in the commons means “Authority, power, and responsibility for implementation are diffused among identifiable people, each of whom has opportunities to deliberate and make decisions with others.” 74 Yet this model holds no space for an outside authority to ensure the communities created for collaboration are inclusive of diverse opinions and those portrayed as foreign “others.” Who in such a scenario is to stop individual commons from creating a community based on shared values of prejudice and practices of discrimination? By clarifying the concept of exclusion, tracing the process of community building, and finally applying these lessons to commons theory, we have identified a central conflict in the commons that calls into question its ability to support and sustain human wellbeing. In both theory and practice, we have seen how commons often rely on and foster relationships that are far from the perfect egalitarianism that is often presented by commons theorists. As communities form and cultivate the intimate relationships necessary for a commons to arise, there is little to stop these communities from developing that commonality with others they feel most comfortable around, continually concentrating wealth as those already on the margins are excluded even further. As Leah Lakshmi Piepzna-Samarasinha rightly advises: “Community is not a magic unicorn.” Equitable, inclusive commons will not develop spontaneously as we heed our better angels and invite all to share in collective action. We need a way to ensure that the commons, in contrast to other methods of political economy, resists the tendency to dispossess and exploit those most vulnerable

#### The aff emerges from an ethic of individualism—care-work focused on survival bounds their politics.

Danylevich 21 (Theodora Danylevich, PhD, teaches courses in disability studies, writing, and women's and gender studies, Introduction: Cripistemologies of Crisis: Emergent Knowledges for the Present, https://csalateral.org/section/cripistemologies-of-crisis/introduction-emergent-knowledges-for-the-present-danylevich-patsavas/)

In her 2018 book, Care Work: Dreaming Disability Justice, disability justice organizer and author Leah Lakshmi Piepzna-Samarasinha positions disability justice dreams and crip knowledge as central to survival and resistance in the face of rising fascism, climate change, environmental toxicity, and state violence. She recalls the mobilization of survival tips garnered from living and moving in a world that actively tries to kill (or let die) queer, trans, black, and brown disabled in the wake of the California fires. Piepzna-Samarasinha writes, “With all our crazy, adaptive-deviced, loving kinship and commitment to each other, we will leave no one behind as we roll, limp, stim, sign and create the decolonial living future.”32 She follows up: “I am dreaming like my life depends on it. Because it does. And so does yours.”33 The dream of a future led by disability justice knowledge centers the creativity, resilience, and force that thrives within and in spite of ongoing and historical violence and does not obscure the conditions from whence such forms of creativity and resilience emerge. Disability justice knowledge draws attention to states and systems of ongoing crisis and violence because of the movement’s commitment to centering the voices and experiences of those most marginalized and most impacted by state violence. The essays in our collection follow this commitment, bringing cripistemological theorizing of crisis directly into conversation with the dreams and knowledges produced by disability justice and intersectional social justice theorists.34 In short, this special section joins calls within the field for a recognition of disability justice work as central to the future of critical disability studies.

The fires that Piepzna-Samarasinha describes, of course, are the very same that PG&E cites as the justification for the shut offs of 2019 that further threatened disabled lives and, in turn, made crip knowledge, kinship, and commitment to survival all the more necessary. In response to the PG&E shutoffs, disability justice activist Stacey Milbern similarly describes the skills, community, and resources that the Disability Justice Culture Club and disabled people tapped into to identify needs with available resources. Milbern echoes the specific knowledge of survival born from disability experiences, stating, “disabled people have done a lot of work around living interdependently and knowing how to build support networks so when there is an emergency, we switch into things we do every day and it benefits the community as a whole.”35 This mobilization emerges from a recognition that, “Nobody else is going to save us, so we have to save ourselves.”36 The knowledge of what happens to disabled, poor, and older people of color in crisis—the lived experiences of abandonment, violence, and neglect—are the conditions of emergence for survival knowledge.

At the same time, do not these very conditions that Piepzna-Samarasinha, Milbern, and others describe—ongoing racialized, classed, xenophobic, and ableist violence—work to destroy the knowledge, skills, and resources needed to survive such assaults? How do we honor the knowledge and survival skills that disability/disabled living may offer when the task of simply trying to stay alive can prevent and frustrate the cultivation and sharing of this knowledge? We have lost far too many leaders of this work, far too soon, to not simultaneously reckon with the reality that such knowledge is conditioned by the precarity of those who produce, shepherd, and archive it. How do we account for the precariousness of both our lives and our knowledges in calls to value and center those most marginalized? And what role does critical disability studies, as a methodology, play in this process?

### 1NC---Liberalism Good

#### Western liberal thought enables political gains for people with disabilities

Simo Vehmasa and Nick Watson 14, Vehmasa is professor of special education at Stockholm University, Watson is Chair of Disability Studies at University of Glasgow, “Moral wrongs, disadvantages, and disability: a critique of critical disability studies,” Disability & Society, Vol. 29, No. 4, 2014, https://www.tandfonline.com/doi/pdf/10.1080/09687599.2013.831751

Disability and disadvantage

In the final sections of this paper, we will discuss CDS in the light of the politics of disability. We will challenge its key ideas and their political use. We argue that deconstructing categories of difference is neither necessary nor desirable in the pursuit of justice for disabled people. Abolishing oppression requires recognition of the various ways different groups of people are marginalized and oppressed, and to do this requires more than an analysis of their categorization and their historical genealogy.

Tackling disadvantage has been the main theoretical and political aim of disability studies and from its first inception academics such as Oliver, Barnes and Finkelstein were interested in documenting the disadvantage experienced by disabled people and how it can be prevented or challenged. It shares with political philosophy a desire to identify and critique discrimination associated with the ill-treatment of disabled people and their subordination (Wolff and De-Shalit 2007, 3). Improving the position of the worst off is generally seen, at least in an egalitarian outlook, as a matter of justice because people’s social status and well-being is inevitably related to the way society is organized. In order to create fair social responses to disadvantage, we have to have a common understanding about disadvantage, and a reasonable (non-arbitrary) way of comparing disadvantages and correcting them.

The crucial issue is to define a proper metric of justice. In other words, ‘what should we look at, when evaluating whether one state of affairs is more or less just than another?’ (Robeyns and Brighouse 2010, 1). For example, what should be the primary focus for justice and how should it be evaluated? Is it the distribution of happiness, wealth, or something else, and how can these be measured? Western political thought has evolved from the contractarian tradition where people voluntarily commit to follow norms and laws they have established in order to ensure peaceful social life. Its most influential recent theorist was John Rawls (1971), whose proposal for the proper metric of justice was the idea of social primary goods; those goods that any rational person would want regardless of whatever else they wanted. Rawls’ list of social primary goods included things such as freedom of thought, movement and choice of occupation, equality of income and wealth, as well as social basis of self-respect. For Rawls the distribution of social primary goods is the main concern of justice. Rawls’ theory has been criticized for excluding people who do not conform to the demands of normality from the spheres of justice. And indeed, Rawls did exclude disabled people from his theory as exceptions to the rule; we should, he argued, first work out a convincing theory for the ‘normal’ people and after that extend it to the ‘more extreme cases’ such as disabled people (Robeyns and Brighouse 2010, 3).

Rawls’ ideas have recently been challenged by the capabilities approach, a theory developed initially by Amartya Sen and later by Martha Nussbaum (2006). Instead of focusing on resources such as income, wealth or legal rights, the capabilities approach emphasizes the significance of functionings and capabilities. Functionings refer to states of the person; things such as literacy, health, mobility, and the ability to appear in public without shame (Anderson 2010). Capabilities, on the other hand, are the real freedoms or opportunities to achieve functionings. So mobility is a functioning whereas the real opportunity for mobility is the corresponding capability (Robeyns 2011). Nussbaum (2006, 76–78) identifies 10 capabilities, ranging from life, ‘bodily health’, bodily integrity, physical security to emotions, affiliation and control over one’s environment. Capabilities provide the bare minimum that all humans should be able to achieve in terms of valued functionings and well-being. So, justice concerns ‘the capabilities to choose a life one has reason to value’ (Robeyns and Brighouse 2010, 2). Lacking involuntarily any capability or central human functioning amounts to a disadvantage. If we are to make comparative judgements about people’s well-being, we have to be able to come to an understanding of how well each individual is doing with regard to various functionings (Nussbaum 2006, 69–81; Wolff and De-Shalit 2007, 36–62).

The capabilities approach is an exceptional philosophical theory in that it has been operationalized. The United Nations, and a number of national governments, most notably the United Kingdom, have all used it as a basis for practical policy development and implementation. It is the basis for the UK’s Equality Measurement Framework, a tool developed for and implemented as part of the equality initiative launched by the last government. Unlike the ideas of Rawls, it has been successfully applied to disability (Burchardt 2004; Nussbaum 2006). The capabilities approach has been criticized on various grounds (Pogge 2010; Walby 2009) but, despite its possible shortcomings, it is one of the few philosophical theories that engages with issues, including disability, in a manner that is not only theoretically illuminating but also politically practical (Sayer 2011).

# 1NR – NDT Round 5

## 1NR

**2NC – Root Cause**

#### There is a reason why the 1AC minimized this section of hatrick

Hatrick 20 (Jessica Hatrick (2020) How to outlive the university?, Communication and Critical/Cultural Studies, 17:4, 410-417, https://www.tandfonline.com/doi/pdf/10.1080/14791420.2020.1829663?casa\_token=AM\_hVr-B\_D0AAAAA:VO4Uy-qNJZmDuK8zhm-i6sfuuzhnxBhHLYKPvtagHilI5cjsoPuIQqagaF4nYvtau7EvlKXo1-aO//ng

We can begin to center care work in the university. Leah Lakshmi **Piepzna-Samarasinha** **defines care work** as rooted in “a place where disability justice and queer femme emotional labor intersect.” 21 Piepzna-Samarasinha’s notion of disability justice is **informed by** Sins Invalid’s (a disability justice performance project) **ten principles:** **intersectionality, leadership of those most impacted, an anticapitalist politic, cross-movement solidarity, recognizing wholeness, sustainability, commitment to cross-disability solidarity, interdependence, collective access, and collective liberation**.22 Emotional labor follows Arlie Hochschild’s work, but for Piepzna-Samarasinha it acknowledges the ways in which this labor falls disproportionately on certain racialized, gendered, and queered individuals.23

**2NC – AT: Perm**

**Can’t combine methods – the perm is theortical conflation – only our alternative alone solves**

**Liasidou 13** (Anastasia Department of Education, European University, Nicosia, Cyprus Published online: 16 Dec 2013., “The cross-fertilization of critical race theory and Disability Studies: points of convergence/ divergence and some education policy implications”, Disability & Society, 29:5, 724-737)

Given the highly complex and contingent nature of disability experience, ‘**theoretical convergence’ does not equate with ‘theoretical conflation’** and hence it is important for DS to further develop **its distinct theoretical and analytical threads in understanding the idiomorphic nature of disability experience**, along with the ways in which it **differs from**, and intersects with, **other sources of social disadvantage**. The cross-fertilization, **rather than conflation**, of diverse insights into difference and diversity calls for an intersectional perspective, which constitutes an awareness raising theoretical, political and pedagogical device in order to advance and institutionalize multiple and cross-cutting understandings of human identities (Asch 2001; Guillaume 2011).

**Turns the case.**

**Erevelles 14** (Nirmala, Professor of Social and Cultural Studies in Education at the University of Alabama “Thinking with Disability Studies,” *Disability Studies Quarterly*, Vol. 34, Nol. 2, 2014, <http://dsq-sds.org/article/view/4248/3587>)

But these promising ruminations that open up radical possibilities for social identities come up against some more serious reckonings in the clear light of a maturing day. Even while I am eager to celebrate these instances where outlaw subjectivities flout the ineffectual disciplinary practices of compulsory able-bodiedness (McRuer 2006), I hesitate, afraid to rain on this parade of possibility by foregrounding the historical and the material constraints of the social. Conscious that I may be blunting the transgressive edges where a feisty discursive aesthetic (Garland-Thompson, 2007) meets a resourceful non-compliant theoretic, my own commitment to a transnational feminist class politics makes it **difficult** for me **to locate** these **conditions of possibility** outside the political and economic structures and social relations emerging from the historical conditions of an exploitative transnational capitalism. Here, there is no respite from the harsh living conditions of poverty nor from the exploitative social relations of production and consumption or from the historical continuities of (neo) colonial wars and a (neo)imperialist political economy—all of which **produce, propagate, and proliferate disability while simultaneously rendering disabled people completely invisible**. Will the field of disability studies look away from these borders that limit the conditions of endless possibility? And what will be the implications if it does?

**Actualization DA – only challenging capitalism prior to their movement allows for successful activism**

**Erevelles 14** (Nirmala, Professor of Social and Cultural Studies in Education at the University of Alabama “Thinking with Disability Studies,” *Disability Studies Quarterly*, Vol. 34, Nol. 2, 2014, <http://dsq-sds.org/article/view/4248/3587>)

It is in this fraught context that perhaps the time has come for disability studies scholarship to locate itself uneasily and yet hopefully at the apprehensive boundaries between academia and activism. Perhaps the time has come for us to disrupt the lazy assumptions we make about what we value as critical scholarship and what we imagine as passionate activism. Consciously aware of both intellectual and economic privilege accorded to be me as a tenured academic, I sometimes wallow in academic guilt. I realize in this essay that buoyed by a guilty reflexivity I have inadvertently set up the problematic binary of academia v. activism. I realize that I tentatively suggest that disability studies scholars whom I so passionately admire pursue dazzling, edgy questions of endless possibility that **may have little significance for the gritty disability activists** surviving at Ground Zero while writing intersectionally, materially, and justly. I freeze up at my guilty recognition that I too am responsible for scholarship that while edgy, clever, abstruse can be both irrelevant and exclusionary for the vast majority of disabled people who **live under the most destitute of social and economic conditions**.

And yet, all of us who have experienced oppression at some point in our lives know that guilt is an inadequate tool of transformation forcing us into knee-jerk creations of useless binaries and immobilizing (mis)readings of struggles that are not our own. My favorite scholar/activist/poet/feminist Audre Lorde (1981) wrote:

[G]uilt is just another name for impotence, for defensiveness destructive of communication; it becomes a device to protect ignorance and the continuation of things the way they are, the ultimate protection for changelessness…. Guilt is only another way of avoiding informed action, of buying time out of the pressing need to make clear choices, out of the approaching storm that can feed the earth as well as bend the trees (9)

To move past guilt necessitates a return to the relational analysis I have described throughout this essay. It is a relational analysis that engages the materiality of difference within specific historical contexts. It is an analysis that historicizes the **fraught relationships between theory and activism**; between disabled and non-disabled subjectivities; between imagined possibility and radical struggle. It is an analysis that seeks to foreground **the material conditions** that can enable academia and activism to work symbiotically in the struggle for unexpected and evocative possibilities of living productive and celebrated lives. And most importantly, it is an analysis that is always **accountable** to the reality that under the **current historical conditions of transnational capitalism**, the transgressive possibilities in some of our lives are often times realized through the exploited labor, oppressive representations, and/or painful exclusions of other lives. While I will be quick to argue that this is not the only analysis to be undertaken in disability studies, I tentatively venture to say that this is an example of an analysis that may enable us to push even more into this division between edgy/dazzling theorizing and transformative accountable praxis reveling in a partnership that is nevertheless tension- filled/complicated/tenuous. Perhaps, it is in these painful tensions between academia and activism that disability studies may ultimately move towards a more accountable praxis for transformative justice.

#### They say the challenge capitalism – that is the link from Harvey

**Care -> Neolib Link**

**Care should never be tied to metrics of merit, competition, winning, or rewards. The AFF’s call for the ballot coopts care work and re-purposes it for the neoliberal university.**

Harriet **Hawkins 19**, Professor of Human Geography at Royal Holloway, University of London, where she is the founder and Co-Director of the Centre for Geo-Humanities, “Creating Care-full Academic Spaces? The Dilemmas of Caring in the ‘Anxiety Machine’,” ACME: An International Journal for Critical Geographies, 2019, 18(4): 816-834, https://acme-journal.org/index.php/acme/article/view/1465/1486

Creating **critical spaces** of care

Caring for myself is not self-indulgence, it is self-preservation, and that is an act of political warfare(Lorde 1988)

We need to demonstrate how they can **be well** and **succeed** in **academia**, even if they eschew dysfunctional behaviors or participation in coercive hierarchies(hooks 2004: 18)

One of the topics the group often circled around was **what kind of academics we should b**e, how much time could we **take for ourselves** and how could we enable ourselves to do this in a context in which to take time for self-**care**, for your own work-life balance can often come at the expense of sometime else’s time. For many feminist scholars self-care is a profoundly **collective political practice**. In a rousing statement, following Audre Lorde, Ahmed exalts us,

Self-care: that can be an act of politi**cal warfare**. In directing our care towards ourselves we are redirecting care away from its **proper objects**, we are not caring for those we are supposed to care for; we are not caring for the bodies deemed worth caring about [author note: ie those bodies the institution cares about]. And that is why in queer, feminist and anti-racist work self-care is about the creation of **community**, fragile communities, assembled out of the experiences of being shattered. We reassemble ourselves through the ordinary, everyday and often painstaking work of looking after ourselves; looking after each other. This is why when we have to insist, I matter, we matter, we are transforming what matters.

For Ahmed such practices of self-care and care for others offer ways to create **communities of care**, to find ‘ways to exist in a world that is diminishing’ (Ahmed, 2014).

If self-care practices offer the means to ‘devalue and **militate against’** the academy, they are however, **not easy to enact**. Drawing on the Buddhist philosopher Thich Nhat Hanh, bell hooks expands at length on the practices of the teacher as healer. Within this she observes the importance of the teacher themselves being self-actualized ‘the practice of therapist teacher or any helping professional should be directed towards his or herself first, because if the helper is unhappy he or she cannot help many people’ (2004:15). As hooks goes onto explain, an intellectual is someone who seeks to be ‘whole, well-grounded in a context where there is little emphasis on spiritual well-being, on care of the soul’ (2004: 16). hooks is seeking to reconnect the dualistic separation of ‘public and private, encouraging teachers and students to see connections between life practices, habits ofbeing and the roles of professors’ (ibid.). To practice self-care might then actually be a central part of being a ‘good’ supervisor, offering an appropriate model of academic working practice that enables our students to see success not only in the reproduction of neoliberal academic cultures of work and emphasis on individualization and competition, but in practices and strategies that challenge and resist these logics.

As academics we can tend to offer the worst role models for graduate students and for a different sort of academy, even cognizant of the issues many of us, myself included, continue to **embrace** a model of ‘**continuous achievement**, and a capacity to **take on work** that is **infinitely elastic’** (Mountz et al. 2016, 273). **Performing as good neoliberal subjects** we respond, at least on the surface, to practices of meritocracy and individual responsibility, **achievement**, advancement, **persistence**, **competition and the winner-takes-all ethos**. This supports Giroux’s (2014) claim that many academics, and Iwould count myself amongst them, are ‘**complicit** in the **very processes** that have **shifted** the mission of the university towards **market defined ends.’**

Inspired by papers and writings on slow scholarship as well as broader work on mindfulness we discussed the strategies for self-care that involved drawing clear boundaries around work-time and relationships, taking up practices that reduce work-related stress, attending to our mental well-being including taking time out, and experimenting (not always successfully) with good practice around email and social media use (Mountz et al 2015; Berg and Seeber 2016). These discussions where often shaped by the complexity and ethics within these practices. We individually and collectively confronted our failures in thisregard. Personally, I was forced to confront my lack of courage and commitment to changing deep-seated individual and collective behaviors, that however damaging had become a safe way to negotiate the contemporary academy. We explored together the challenges we felt around standing against entrenched ideologies and cultures of overwork that seem to present a singular route to success, and of retaining significant faith in a mode of practicing academia that often seems at odds with those individual researchpractices and modes of ‘saying no’ that undoubtedly yield recognition and promotion more quickly and efficiently. These are not easy things to do from a professorial position, let alone from a precarious position.

Our discussions tracked across some of the debates around self-care. From the specifics of how Gill (2016), for example, explores how self-care for detention centre guards can involve a turning away from suffering others, to the more conceptual, as Raghuram (2016) argues, care practice must be emplaced and as such must be negotiated, rather being assumed as a global practice. Emplacing our own self-care practices we explore the tensions around saying ‘no’, and the risks of foregrounding the needs of the self over and against collective forms of collegiality. Hotly debated was the so-called weaponisation of work-life balance, and how we saw this unfolding within our peer groups. Some individuals, and most departments likely have them, are experts in refusal often of certain tasks they deem unworthy, somehow remaining blind to the ways their choices can intensify the uneven distribution of the economy of energies in the academy, often at the expense of those overburdened and already marginalized staff members (Ahmed, 2013b; Berlant, 1998). These arethorny ethical issues and we sought ways to negotiate these individually and collectively. We reflectedon the role of leadership as integral to challenging these entrenched practices of refusal, and on the need to cultivate departmental cultures of self-care that are orientated towards collectivization. We explored the challenges of opening up collegiality as a point of departmental discussion,and how to shiftaway from fostering practices of resentmentfor uneven labour,and thenofcondoning such feelings as ‘character flaws rather than structural effects’ (Meyerhoff, 2011, 493). **Caring is hard,** whether for self or others, but it requires a **with-ness**, an **intimacy** expectation that is as integral to **academic departments** as it is to **society at large.**

Counting caring?

Since I wrote the first incarnation of this paper in 2015 as part of now compulsory (in my UK institution) post-graduate diploma in Teaching in Higher Education, and then edited it for submission to ACMEin late 2016/ 2017it feels like there has been a shift, albeit a small if potentially contentious one, in the care that the academy takes of care. Whilst the surveys and workload models still exist, the rise in the UK of the Teaching Excellence Framework (an award system for undergraduate teaching), and the mainstreaming of discussion around mental health and wellbeing, has provided a context in which care becomes linked to a focus on teaching practices in ways that render the value and importance of caring perhaps more visible than before. Since the first draft of this paper, we have been awarded a University Excellence Teaching Prize for the wellbeing programme, and a small pot of money for the pilot development of pod-cast resources. The programme also found a place in our Department’s successful Athena SWAN application, with the assessors noting it as an example of ‘best practice’. Such accolades, and associated invitations to talk to our university-wide doctoral training fora and Equality and Diversity Champion Networks reminds me of Ahmed’swritings on how ‘good practice’ canbecome‘a set of practices that enable an organisation “to look good”’(107), but also by extension, enable me to look good. We have helped evolve a university-wide Graduate Mental Health and Well-Being task force led by University senior management,and have contributed to sector-wide funding initiatives that seek to address these issues. All these, together of course with this paper, represent a rendering visible of the care-full space of the programme and its coming to count. But each come with their own ambiguities, in some cases enrolling the programme into what Ahmed terms the university’s ‘technologies of excellence’ and ‘languages of merit’ (2012, 110).

Such enrolments pose practical and ethical questions. Practically we have concerns about proposals to scale up the programme beyond the Geography department and to make some sessions compulsory. The sessions we have designed could become situatedas part of thePhD training programme that all students must attend acertain percentage of, and that the staff could be required to deliver sessions in the programme. This all feels difficult, not every student is going to feel comfortable in these spaces, nor will every member of academic staff feel comfortable about facilitating these discussions. How will the community of trust and care that has been created scale up, how do people feel about sharing when there is a sea of faces in the room, does this make it easier?Harder? Can our care-full spaces still retain their role as diverting, as energising if they become enrolled within the suite of ways that the university seeks to demonstrate it cares. Ahmed has explored similar ambiguities when it comes to doing diversity work, indicating thetensions and discomforts that emerge when stories of challenges and responses too them morph into ‘institutional success stories’ (2012, 10). As colleagues across the university are excited by the programme, and as various teams across the institution mobilise it within the production ofuniversity equality and diversity documents, our activities become part of an institutional demonstration of caring. As Ahmed cautions, ‘its as if having a policy becomes a substitute for action’ (11). Does **the co-opting** of the programme by the university and its **mobilisation of it** within its **own materials** become a form of what Ahmed calls ‘**institutional happy talk’**, which ‘work[s] to **obscure** the **troubling issues** that **led** to the need for such a programme in the first place (2012,14)?I worry that the programme has enabled a ‘mode of attention’ to wellbeing that substitutes exploration and addressing the route of the problem, with the generation of a series of solutions.

Further, in the midst of the arguments about making care count, I came to reflect on how **discomforting** it can be when **care** does get **enrolled** within these **metrics of merit.** I am not sure from what place I am resisting care counting, it is less here a concern with a shift in the nature of the programme and its content, I will continue to run it in the form that works best for those students who want to engage rather than through any centrally mandated sense of content and form. But as Ahmed reflects on then tensions of writing on doing diversity work **‘I had no intention of writing on these experiences**. If anything I welcomed being involved in institutional work that was **not related** to my **academic scholarship**. The **imperative** to **transform all experience into writing** can reduce the **value** of an **experience** by treating experience as a **means to this end’** (2012, 5). The programme was not created within the context of any of the infrastructures of excellence and merit that it hasnow become enrolledwithin. Partly what it seemed to do was to help me rethink and rework my relationship to ‘institutional worlds’ it sat within, it helped counter to some of the alienation I was feeling, Irecognised in it, the experience Ahmed describes as‘the energising and often inspiring experience of working ‘on’ the institutions we work at’ (Ahmed, 2012,5). As such, something starting feeling **lost** or **compromised** by the **increased visibility** of the programme and its **awards**. Perhaps it felt instrumentalised, perhaps its becoming visible had made it a potentially risky diversion of the economies of attention away from the harder tasks of addressing solutions through structural change,hadwe somehowabsolved the university of responsibility through finding our own solutions to the problems we collectively face?

**The AFF uses care to help themselves ‘play the game.’ This is an individualistic understanding that mystifies structural determinants of precarity under neoliberalism. That turns the case.**

Emily Jay **Nicholls et al 21**, Research Fellow (Institute for Global Health) at University College London, “‘NOT IN OUR NAME’ Vexing Care in the Neoliberal University,” Nordic Journal of Science and Technology Studies, Vol. 9, Issue 1, 2021, https://researchonline.lshtm.ac.uk/id/eprint/4660623/8/Nicholls\_etal\_2021\_Not-in-our-name-vexing.pdf

So far, we have discussed ‘care’ as an **ethos** which **motivated our interactions** with each other and as a mode of **contingent** and inventive **methodological engagement**. In this section, we **jump scales** (Agard-Jones, 2013; Jain & Stacey, 2015; Lindén, 2020) to consider how we are also **objects of care** in the wider context of higher education. Funders, university administrators, labour unions, professional societies, departmental mentors and scholars of higher education have all expressed **concern** about the **precarity** of ECRs in the **neoliberal academy** (e.g. Herschberg et al., 2018; Locke et al., 2016; Maher & Sureda Anfres, 2016; McAlpine & Amundsen, 2017; Signoret et al., 2019; University and College Union, 2016). In tandem with this turn to the experience of ECRs and the **marketization of the university**, we have seen a surge in academic events aimed at ECRs in the form of pre-conference conferences, networking events and workshops, not dissimilar from our ‘salon’ at CISP. In general, these interventions propose to care for ECRs by providing: (1) capacity-building to develop the professional skills of ECRs; and (2) opportunities for peer-to-peer learning and support. Many of these interventions are likely to have arisen in part from the pressures put on funding bodies, universities and professional societies by ECRs to have their experiences and needs acknowledged and centred, and, we think, rightly so.

While these caring interventions seek to promote the kinds of positive peer-to-peer ECR interactions that we have experienced with our feminist-inflected salon, we pause and ask to what extent these efforts resemble the ‘**wellness’ programmes** rolled out by universities in response to a crisis of stress within universities. Gill and Donaghue have critiqued such wellness interventions as ‘**resilience courses’** that attempt to ‘address alarming levels of staff stress, unhappiness and overwork through a focus on **individual psychological functioning’** (2016, p. 97). We, too, are alarmed by the number of events for ECRs that currently centre on neoliberal **discourses of ‘self-care’** and **resilience**. Here, we are reminded of Vik Loveday’s (2015) work on class and gender in higher education, which not only foregrounds the unequal ways that hardships are distributed within the academy (see also Gill & Donaghue, 2016), but also highlights how these **structural inequalities** can become **normalized** and understood as **personal deficits**. Loveday argues that the production of anxiety in the neoliberal university also functions to make individuals feel **personally responsible** for their **success** or **failure** and asks, ‘How is it that a problem of society can so easily be turned into a **deficiency of the self?’** (Ibid., pg. 4). Extending this line of questioning, we wish to also ask: ‘How is it that a problem of the academy can so easily be turned into a deficiency of the ECR?’ (see also Loveday, 2018). Relying solely or even mostly on strategies that promote the resilience and selfcare of ECRs does not turn back to ask the question of why such tactics are needed in the first place. Indeed, as The Great Lakes Feminist Geography Collective has argued (Mountz et al., 2015), our needs would be much better served by **collective action** and the **restructuring of institutions** than the **individualized emphasis** on **behaviour-change**. Returning to the analysis by Gill and Donaghue, we argue that such forms of care:

remain locked into a **profoundly individualist framework** that turns **away** from **systemic** or **collective analyses** and **politics** to offer instead a **set of individualised tools** by which to ‘**cope’** with the **strains** of **working in the neoliberal academy**. These ‘technologies of self’ call forth an **enterprising**, **self managed** and ‘**responsibilised’ subject** who can ‘manage time’, ‘manage change’, ‘manage stress’, demonstrate **resilience**, practice mindfulness, etc. – **whilst leaving the power relations and structural contradictions of the neoliberal university untouched and unchallenged**. (2016, p. 92)

We are concerned that simply creating more forums specifically for ECRs on top or outside of the routine of the university works to further silo, marginalize and silence our experiences. These spaces of ‘care’ **perpetuate the problem**: ECRs learn how to cope with precarity, **play the game** or **disappear** and the higher education sector can feel **satisfied** that they have **done their bit.**

It is heartening and validating to observe the growing number of research publications, position papers and other reports documenting the experiences of ECRs and advocating on their behalf. The acts of caring about ECRs (cited at the beginning of this section) can contribute to more generative environments in higher education. But unless this research and writing is coupled with interventions that go beyond peer-networks and building skills and resilience, the continual re-telling of the ECR story may reify structural problems to the extent that they seem insurmountable, thereby exacerbating the production of shame and anxiety among new scholars in the neoliberal academy (see Loveday, 2016). We wonder if there might be more **relational methods to care** about and for ECRs which might also create **more livable worlds** for the wider collective of actors who are situated across the higher education sector.

We are reminded anew of Stengers and Despret, who have noted that when consenting to the admission of girls, of those less affluent, and then of immigrants, entrance was offered only on the terms of the university:

If there has been a collective preoccupation, it has not been the transformation of the arrival of young people who were not preformatted ‘heirs’ into a dare, by offering them knowledge that would be worthy of them, or that which would open horizons other than that of joining the ‘elite’ as it has been defined without them or even against them. Rather, the preoccupation has been the threat of a ‘lowering of the standard.’ You are welcome on our terms, so that nothing changes. You are welcome as long as you do not make a fuss. (2014, p. 17)

We are, then, **ambivalent** about care interventions, including our salon, which seek to make difficult conditions in the university **more bearable** for ECRs **without changing the system more broadly**. That is, we are concerned that caring about and for ECRs in this manner will **allow a broken system to keep ticking over**, without offering or enabling **space** for others in higher education to **think** and **do the academy differently**.

**2NC – Alt Solves**

**The alternative solves all the case—we just need to win a small risk of a link. Capitalism determines who is included, who is productive, whether to spend money on someone. Under industrial capital, building ramps is a waste of time because disabled people aren’t “productive.”**

**Choonara & Prasad 14** (Esme Choonara author of A Rebel's Guide to Trotsky // Yuri Prasad author of The struggle for Tamil freedom “What’s wrong with privilege theory?” 2014, [www.isj.org.uk/?id=971](http://www.isj.org.uk/?id=971))

But what of the rivalries, jealousies and downright prejudices that can be found among many workers today? Tim Wise argues that “before any substantial alteration in the class system can become possible, we will have to attack white racism and substantially diminish it”.32 But this creates a **circular argument** in which white workers cannot act to change society because they are too racist, but they are racist because they have been unable to change society. Marx’s answer to this was to say that **struggle can play a crucial role in breaking the hold of reactionary ideas and transforming society**. Because capitalism forces workers to fight for even the basics of life, it generates **class struggles** that **test and clarify** **ideas**. For example, it is not possible to understand how it is that prejudice against black and Asian people in Britain was pushed back from the 1980s onwards without looking at the crucial struggles in the workplaces, schools and communities that came before. These were battles that encouraged black and white workers to act together, sometimes over strictly economic issues, and as a consequence forced many white people who accepted racist stereotypes to reappraise them. For Marx, struggle has a cleansing effect:

The materialist doctrine concerning the changing of circumstances and upbringing forgets that circumstances are changed by men and that it is essential to educate the educator himself. This doctrine must, therefore, divide society into two parts, one of which is superior to society. The coincidence of the changing of circumstances and of human activity or self-changing can be conceived and rationally understood only as **revolutionary practice**.33

Marxists see struggle as fertile terrain in which **all the backward ideas that surround us are up for challenge**—on the proviso that there are individuals and groups that are determined to do so.¶ Marxism and oppression

Opponents of Marxism often claim that the theory reduces everything to a question of class and therefore cannot help us understand or counter oppression. Even some on the radical left repeat the charge that Marx and Engels romanticised workers while trivialising the divisions among them. So Patricia Hill Collins caricatures Marxists as saying: “If only people of colour and women could see their true class interests, class solidarity would eliminate racism and sexism”.34

If this were really our attitude then you would expect Marxists to have ignored struggles for liberation, treating them as a diversion from the necessary business of class struggle. On the contrary, Marxists have always thrown themselves into such battles—from the earliest movements of working class women in east London, in which Eleanor Marx played a crucial role, to the role played by Communists in the fight against segregation in the American South during the Depression years, to the mass movement against Thatcher’s anti-gay Section 28 law in the 1980s.

Neither does Marxism as a theory ignore oppression. Even a cursory reading of Marx and Engels shows that they both rightly viewed chauvinism and prejudice as a cancer in the working class movement—one that required the utmost attention from socialist organisations of the day. Describing the anti-Irish racism of the 19th century, Marx wrote: “This antagonism is the secret of the impotence of the English working class, despite its organisation. It is the secret by which the capitalist class maintains its power. And that class is fully aware of it”.35

Long before women won the right to vote in Britain, Marx was arguing (using the sometimes unfortunate language of the time) for them to be admitted into the leadership of the working class organisations internationally, writing, “Everyone who knows anything of history also knows that great social revolutions are impossible without the feminine ferment. Social progress may be measured precisely by the social position of the fair sex”.36 And, as British newspapers spewed racist bile about the often bloody 1857 Indian Mutiny, Marx defended the insurrectionists and their methods, writing: “There is something in human history like retribution, and it is a rule of historic retribution that its instrument be forged not by the offended, but by the offender himself”.37

It is true that Marxists place an emphasis on class, despite knowing that an individual’s class position or background does not always trump their gender, race or sexuality in the way that it shapes their lives. We do so for two specific reasons. First, a class analysis is crucial to understanding the **roots of oppression**, that is how and under what circumstances it began, **and why it continues today.** Class analysis helps us understand in whose interest oppression functions, and how it is linked to the capitalist system as a whole. Developing such an approach allows Marxists to avoid the main pitfalls that befall other attempts to explain oppression which tend to see it as either the result of poor education and lack of appropriate training, or as something innate and biologically written into our brains. Second, class analysis is vital because, by **locating the problem within the system rather than within individuals**, and identifying a force that can overthrow the system**, it holds out the only real possibility of fundamental and permanent change.** Marxists argue that capitalism can be overthrown, and with it will go the whole baggage of backward ideas that the system depends on.¶ Dominant ideas about race, gender and sexuality have undergone a massive transformation in the decades since the Second World War. But the changes, in nearly all cases for the better, did not come about by accident or through gradual evolution—and they certainly didn’t come about because of a wave of enlightenment passing among the ruling class. Rather they are the product of the changing needs of capitalism and of people’s struggles to shape the world they live in.

Marx argued that the working class is the only group in society that has both the power and a material interest in overturning society and creating the world anew. He understood class as a social relationship that exists independently of whether people identify themselves as part of it. Viewed in this way, class is radically different from the categories created by oppression and the working class should not be regarded simply as a group that also faces discrimination to be added to a list.¶ An important consequence of seeing workers breaking from chauvinism is that people who face oppression can start to envisage those workers as potential allies, rather than hostile competitors and enemies, raising the prospect of united struggles that may have seemed impossible not long before.

**AT: Alt ≠ Accessible**

**3. They are just flat-out wrong – the notion that less-abled people cannot participate in politics is a self-fulfilling prophecy – empirics prove that movements that challenge capitalism are accessible**

**Oliver 99** (Michael Professor of disability studies at the University of Greenwich, “Capitalism, Disability and Ideology: A Materialist Critique of the Normalization Principle,” 1999, <http://tinyurl.com/zadce8o>)

As far as disabled people are concerned, we have seen over the past fifteen years disabled people coming together to organise themselves as a movement at local, national and international levels. In Britain, for example, in order to harness this growing consciousness of disabled people, to provide a platform to articulate the re-definition of the problem of disability and to give a focus to the campaigns for independent living and against discrimination, the British Council of Organisations of Disabled People (BCODP) was formed in 1981 and its success in the subsequent decade is entirely an achievement of disabled people themselves (Hasler 1993).

Its conception and subsequent development have been achieved without extensive financial support from Government or from traditional organisations for disabled people. On the contrary, the BCODP was criticised from the start as being elitist, isolationist, unrepresentative, and Marxist by a collection of unrepresentative people with abilities, right and left wing academics, isolated and elitist staff and management of traditional organisations and many professionals whose very careers were bound up with keeping disabled people dependent.

Yet despite these attacks, BCODP has gone from strength to strength, now representing over 90 organisations of disabled people and 300,000 disabled individuals. These initiatives not only established BCODP as the only representative voice of disabled people in Britain but by its very success it stimulated an ever growing number of disabled people to adopt a disabled identity. Similar stories of the rise of the disability movement could be told from other parts of both the developing and the developed world.

With this growing sense of a collective, political identity has developed the self-confidence not simply to ask for the necessary changes but to demand them and to use a whole range of tactics including direct action and civil disobedience. What's more, this movement is democratic arid accountable to disabled people themselves (Dreidger 1988 Oliver 1990 Davis 1993) and its collective voice is demanding that we be included in our societies everywhere by ending the oppression that confronts us, not by offering us and our oppressors normalization or social role valorization programmes.

Conclusion

In this paper I have argued that normalization as a social theory is inadequate in that it does not describe experience satisfactorily, its explanation of why disabled have the kinds of experiences they do is wholly inadequate, and its potential for transforming those experiences to something better is limited. It is not only those unsympathetic to normalization who question its future, however

"What does normalization now have to do in order to be a positive force for change in the 1990's. The answer may lie in going back to its roots and realigning itself in relation to other sociological theories". (Brown and smith 1992.176)

Whether such a realignment, even with materialist theory, is likely to resuscitate normalization is itself doubtful, because what is at stake is a vision of the kind of society we would like to live in. Normalization theory offers disabled people the opportunity to be given valued social roles in an **unequal society** which values some roles more than others. Materialist social theory offers disabled people the opportunity to transform their own lives and in so doing to transform the society in which they live into one in which all roles are valued. As a disabled person I know which of those choices I prefer and I also know which most of the disabled people I meet prefer.