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## 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.

#### Debating against a well-prepared opponent makes us better advocates, making it more likely your ideas will be accepted---resolutional focus fosters the best form of disagreements by ensuring teams research the most persuasive version of their ideas while bolstering critical reflection and breaking down dogmatic beliefs

Conor Friedersdorf 17 is a staff writer at The Atlantic, The Highest Form of Disagreement: The best way to argue is to take on your opponents’ strongest arguments, not their weakest ones, 7-26-17, <https://www.theatlantic.com/politics/archive/2017/06/the-highest-form-of-disagreement/531597/>, y2k

And I want more Americans who demand these kinds of debates for the sake of our democracy. Just ideas against ideas, let them fight it out, and if you lose, come back with better ideas. Tony was right. A rumble can be clenched by a fair fight if you've got the guts to risk that. Are millions of Americans ready to start fighting fair for the sake of our democracy? For the sake of solving common problems we all face? Listening to those remarks Sunday at the Aspen Ideas Festival, which is co-hosted by The Aspen Institute and The Atlantic, I shared the speaker’s frustration with attacks on people rather than ideas, which pervade so much of today’s political discourse. And yet, I would add something to his analysis: ad hominem is a problem, but if you watch cable news, or follow Twitter, or reflect on the way that Donald Trump engages with Democrats, or Democrats with other Republicans, you notice a style of argument every bit as pernicious. It consists of constantly elevating the very worst of the other side, attacking only the weakest rather than the strongest part or version of the ideas held by the other political party or ideological tribe or cultural identity group. As Scott Alexander puts it, “The straw man is a terrible argument nobody really holds, which was only invented so your side had something easy to defeat. The weak man is a terrible argument that only a few unrepresentative people hold, which was only brought to prominence so your side had something easy to defeat.” Tucker Carlson is a master of the weak man––as was Jon Stewart. And America would benefit if our culture of argument elevated the opposite approach, steel-manning, “the art of addressing the best form of the other person’s argument, even if it’s not the one they presented.” Here’s Chana Messinger extolling it in one of those great old-school blog posts that I am honored just to honor: We probably know best which arguments are most difficult for our position, because we know our belief’s real weak points and what kind of evidence we tend to find compelling … use that information to look for ways to make their arguments better, more difficult for you to counter. This is the highest form of disagreement. If you know of a better counter to your own argument, say so. If you know of evidence that supports their side, bring it up. If their argument rests on an untrue piece of evidence, talk about the hypothetical case in which they were right... Because if you can’t respond to that better version, you’ve got some thinking to do, even if you are more right than the person you’re arguing with. In short, she says, “Think more deeply than you’re being asked to.” And bear these fruits: First, people like having their arguments approached with care and serious consideration. Steelmanning requires that we think deeply about what’s being presented to us and find ways to improve it. By addressing the improved version, we show respect and honest engagement to our interlocutor. People who like the way you approach their arguments are much more likely to care about what you have to say about those arguments… Second, people are more convinced by arguments which address the real reason they reject your ideas rather than those which address those aspects less important to their beliefs. Coming full circle to our NPR host’s project, Messinger argues that “steel-personning ~~steelmanning~~ makes you a better person. It makes you more charitable, forcing you to assume, at least for a moment, that the people you’re arguing with, much as you ferociously disagree with them or even dislike them, are people who might have something to teach you. It makes you more compassionate, learning to treat those you argue with as true opponents, not merely obstacles. It broadens your mind, preventing us from making easy dismissals or declaring preemptive victory, pushing us to imagine all the things that could and might be true in this beautiful, strange world of ours. And it keeps us rational, reminding us that we’re arguing against ideas, not people, and that our goal is to take down these bad ideas, not to revel in the defeat of incorrect people.” It’s only just out of reach.

#### Competition benefits all participants – it creates an arena for striving together towards excellence. But this model requires delimited conditions for competition and the guarantee of future opportunities for play which the affirmative undermiens. Their offense does not apply – debate as a contest is not a neoliberal competition based on self-interest

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

## Cap

**Capitalism exacerbates structural violence and inaugurates a system of crises**

**Parr 13**—Associate Professor of Philosophy and Environmental Studies at the University of Cincinnati [Adrian, *THE WRATH OF CAPITAL: Neoliberalism and Climate Change Politics*, p. 145-147]

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

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

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

We do not see the crisis for what it is; we only see it as an isolated symptom that we need to make a few minor changes to deal with. This was the message that Venezuela's president Hugo Chavez delivered at the COP15 United Nations Climate Summit in Copenhagen on December 16, 2009, when he declared: "Let's talk about the cause. We should not avoid responsibilities, we should not avoid the depth of this problem. And I'll bring it up again, the cause of this disastrous panorama is the metabolic, destructive system of the capital and its model: **capitalism**.”5

#### Capitalism transforms individuals into ‘Nobodys’---that creates the fundamental conditions for State violence. Our critique doesn’t deny the importance of identity, rather we should begin with a critique of capitalism because class mediates oppression.

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

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

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

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

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

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

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

#### Theory of symbolic-exchange renders material production invisible. Constructing less oppressive economic systems requires making production more visible.

Dilley 5—Professor of Social Anthropology at St. Andrews [Roy, in *Commodification: Things, Agency, and Identities* eds. Van Binsbergen & Geschiere p. 240-241]

My argument is that the potential to create a hyper-real world of consumption is predicated upon making production invisible, and not on the complex vagaries of postmodernism. Baudrillard has done precisely this - making production invisible - when he presents a critique of Marxist theories of modes of production ( 1981, 1985). The idea of production, Baudrillard argues, as the key to history, as the central concept of social theory, is no longer appropriate for comprehending contemporary social relations. In its place should be substituted the primacy of consumption not production. Consumption is thus the 'prime mover' of history.1 By making production invisible and by considering only consumer desire, Baudrillard is thus able to argue for a hyper-real world of the free-floating · commodity sign.

This argument could, I suggest, be applicable to the situation of the vendor of 'traditional' African art and 'antiques' who is able to put the case for the sign-value of an object, -its 'authenticity'- that is divorced from its point of production. He creates something of a hyper-real world of sign-values that are used to distinguish one set of objects from another. This is arguably, however, the result of a particular 'regime of value' in which the political relations connecting production, distribution and consumption have been manipulated for a specific end, and not the necessary result of living in a post-modem condition. But I have a more general point to make about the relationship between production and consumption, both in the West and elsewhere. My case is that production has become invisible not because of the fact that production in itself has become unimportant or theoretically obsolete in the late 20th/early 21"1 century. Consumer society cannot simply be read as a post-modem society in which a theory of consumption inevitably supplants an older theory of production, where the means of consumption overtake the means of production. Miller argues convincingly for more attention to be given to consumption, which has now 'become the main arena in which people have to struggle towards control over the definitions of themselves and their values' (1995c: 277). This is perhaps true for large ' numbers of people in the West who now define the major lineaments of their cultural identities through consumption activities rather than with reference to their occupations.

That is, this is perhaps true with reference to the structures and processes of the creation of meanings and cultural identities for certain sectors of the population. Yet, the processes of globalization have marginalized and peripheralized production to locations beyond the boundaries of Europe and the U.S. There is an obscuring of production processes whereby multinational companies have the ability to shift production around the globe to utilise sources of cheap labour in their search to reduce production costs. The Marxist adage that capital is more mobile than labour still seems to hold. 1 A reaction to this obscuring of production can be seen in the move by alternative trading companies, referred to in the U.K. as the 'fair trade' movement, that now attempts to represent the producers of commodities that are consumed in the West. Whether marketing coffee, tea or South American craft goods, the publicity of 'fair traders' points out who the producers are and to whom the extra money goes when one buys the product.

The point of this digression is to highlight again the argument that it is the exercise of political control over production and consumption either within the global economy or within local economies of Senegal that constitutes regimes of value. The separation of production from consumption, and the triumph of the latter over the former, are not inevitable movements of history, but part of the political exercise of power by specific agents within contexts of greater or lesser size. The exercise of this political control within the global economy has meant that production has been, for Western Europe at least, marginalized to the peripheries of the world system, to areas beyond our gaze and beyond our ken. I have attempted to show by means of my Senegalese examples that the relationship between production and consumption can similarly be altered, manipulated and framed in such a way as to create the foundation for different regimes of value**.** These regimes of value, I argue, involve not simply the control of the flow of commodities, but the exercise of power in casting the relationship between the activities of craftsmen as producers of objects, on the one hand, and the activities of those people who are involved in the exchange and sale of these objects, on the other. Regimes of value involve political control over non-things as well as things. What is shown to be an aspect of political control in the local regimes of value in Senegal may also be true for the workings of multinationals within the global economy.

#### Our alternative is to make pragmatic demands upon the state towards an anti-capitalist project. 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

#### Their explanation of racial violence is wrong.

Peter Hudis 15, Professor of English and History at Queens College, 2015, Frantz Fanon: Philosopher of the Barricades, p. 35-37

Fanon’s vantage point upon the world is his situated experience. He is trying to understand the inner psychic life of racism, not provide an account of the structure of human existence as a whole. Racism is not, of course, an integral part of the human psyche; it is a Social construct that has a psychic impact. Any effort to comprehend social distress that accompanies racism by reference to some a priori structure- be it the Oedipal Complex or the Collective Unconscious- is doomed to failure.

Carl Jung sought to deepen and go beyond Freud's approach by arguing that the subconscious is grounded in a universal layer of the psyche- which he called "the collective unconscious:' This refers to inherited patterns of thought that exist in all human minds, regardless of specific culture or upbringing, and which manifest themselves in dreams, fairy tales, and myths. Jung referred to these universal patterns as "archetypes:' It may seem, on a superficial reading, that 1 Fanon is drawing from Jung, since he discusses how white people tend to unconsciously assimilate views of blacks that are based on negative stereotypes. Even the most "progressive" white tends to think of blacks a certain way (such as "emotional;' "physical," or / "aggressive"), even as they disavow any racist animus on their part. However, Fanon denies that such collective delusions are part of a psychic structure; they are not permanent features of the mind. They are habits acquired from a series of social and cultural impositions. While they constitute a kind a collective unconscious on the part of many white people, they are not grounded in any universal "archetype." The unconscious prejudices of whites do not derive from genes or nature, nor do they derive from some form independent of culture or upbringing. Fanon contends that Jung "confuses habit with instinct."

Fanon objects to Jung's "collective unconscious" for the same reason that he rejects the notion of a black ontology. His phenomenological approach brackets out ontological claims on both a social and psychological level insofar as the examination of race and racism is concerned. He writes, "Neither Freud nor Adler nor even the cosmic Jung took the black man into consideration in the course of his research.”

This does not mean that Fanon rejects their contributions tout court. He does not deny the existence of the unconscious. He only denies that the inferiority complex of blacks operates on an unconscious level. He does not reject the Oedipal Complex. He only denies that it explains (especially in the West Indies) the proclivity of the black "slave" to mimic the values of the white "master." And as seen from his positive remarks on Lacan's theory of the mirror stage, he does not reject the idea of psychic structure. He only denies that it can substitute for an historical understanding of the origin of neuroses .23 Fanon adopts a socio-genetic approach to a study of the psyche because that is what is adequate for the object of his analysis.

For Fanon, it is the relationship between the socio-economic and psychological that is of critical import. He makes it clear, insofar as the subject matter of his study is concerned, that the socio-economic is first of all responsible for affective disorders: "First, economic. Then, internalization or rather epidermalization of this inferiority."24 Fanon never misses an opportunity to remind us that racism owes its origin to specific economic relations of domination- such as slavery, colonialism, and the effort to coopt sections of the working class into serving the needs of capital. It is hard to mistake the Marxist influence here. It does not follow, however, that what comes first in the order of time has conceptual or strategic priority. The inferiority complex is originally born from economic subjugation, but it takes on a life of its own and expresses itself in terms that surpass the economic. Both sides of the problem-the socio-economic and psychological-must be combatted in tandem: "The black man must wage the struggle on two levels; whereas historically these levels are mutually dependent, any unilateral liberation is flawed, and the worst mistake would be to believe their mutual dependence automatic:''5

On these grounds he argues that the problem of racism cannot be solved on a psychological level. It is not an "individual" problem; it is a social one. But neither can it be solved on a social level that ores the psychological. It is small wonder that although his name never appears in the book, Fanon was enamored of the work of Wilhelm Reich. This important Freudian-Marxist would no doubt feel affinity with Fanon's comment, "Genuine disalienation will have been achieved only when things, in the most materialist sense, have resumed their rightful place:'27

#### Reject neuro-reductionism---human behavior is learned not intrinsic

Earl Gammon 19, Lecturer in the Department of International Relations @ University of Sussex, “Affective neuroscience, emotional regulation, and international relations,” Sussex Research Online, 2019, https://sro.sussex.ac.uk/id/eprint/88999/1/191231\_AN\_IR.pdf

Exploring how the neural apparatus provides a substrate for the social self, this analysis resists biological or ‘neuro-reductionism’ (Martin 2004). Though neural predispositions delimit how we experience the world, they do not furnish a parsimonious psychology for explaining human behavior. Attempts to locate neural correlates of complex social behavior, that is, sufficient conditions in specific brain regions, are rejected. Recent neuroscience suggests that almost all psychological specializations of the ‘higher’ mammalian neocortex are learned, not intrinsic (Panksepp and Biven 2012). In contrast to neural correlates, this analysis adopts neuroscientist Georg Northoff’s (2011) notion of neural predispositions, which entail the neural conditions necessary but non-sufficient to explain psychological processes. Accordingly, this analysis remains skeptical of interdisciplinary endeavors like neuroeconomics, which looks to develop ‘linkages between measurable neural activity and utility-like concepts derived from economics’ (Glimcher 2011, 397-398). Given the plasticity of neural circuitry in higher cortical regions, charting such correlates can run afoul by naturalizing that which is socially conditioned.3

#### Civil society does not demand the monopolization of black female flesh. Progress is possible.

Marcus Brown 19, PhD candidate in the Department of Philosophy at Stony Brook University, 8/24/19, “Bad Faith and Afropessimism: Notes Toward a Debate,” https://content.redvoice.news/bad-faith-and-afropessimism-notes-toward-a-debate/

As should by now be obvious, my intent in drafting these notes is not to call Wilderson up to the pillory. There is much to be admired in both the form and content of his books, essays, and interviews. He is a captivating narrator and prose stylist; and the thick splotches of pathos that sometimes distract from his arguments are regularly broken by ironic caesuras that prevent the reader's suffocating on Black pain. Compared with some of his colleagues and disciples, his arguments are mercifully lucid, capable of connection into something like an account of the social whole. Yet that whole turns out to be false, and not in the Adornian, but in the classical sense: Wilderson’s adopted standpoint fails to yield a coherent account of the contradictions that rend our social totality, or an actionable program for liberation from racial capitalism, because it mistakes a chimerical subject-position (the natally alienated Black subject) for the Archimedean point of a global modernity in crisis.

Wilderson’s flawed standpoint has two regrettable consequences for Afropessimist thought. First, it limits Afropessimist sources of Black rebellion to our dehumanized being-for-others (the white other), rather than acknowledging positive forms of self-regard and communal recognition among Black folk that are reservoirs of resistance against white supremacy. Second, in overemphasizing the role of antiblackness in the constitution of Black and non-Black lifeworlds, Wilderson and his cohort seem deliberately to overlook the Fanonist basis for revolutionary internationalism: since the major antagonism in modern life centers on colonized versus non-colonized nations, the presence of un-reflective anti-Blackness among non-Black people of color does not prevent radical coalition with them, any more than similarly reactionary beliefs among and between Black groups cut off our shared revolutionary potential. Both positions ultimately land the Afropessimists on an error whose irony is underlined by their collective Francophilia. That error is Sartrean mauvaise-foi, or bad faith, the paradoxical human capacity to lie to ourselves about what we know to be true concerning our facticity (the inescapable accretion of our past decisions) and our freedom (to transcend what we have been toward what we are not yet).

To my first criticism, I would like to invoke the modified Du Boisian concept of potentiated double-consciousness. Double consciousness, in Du Bois's classic formulation from Souls of Black Folk, is the ability of the colonized/racialized subject to see themselves not only through their own eyes, but also through the eyes of their oppressor. As Lewis Gordon and Paget Henry have argued, Du Boisian double consciousness is not just the undialectical opposition within the Black subject of our self-concept with that of the racial other—such an opposition, as even Du Bois understood, is not in itself productive of a radical politics. As their argument goes, the self-concept with which the Black subject begins must be affirmative of their humanity and value as a Black human being. If the Black subject understands that the imperatives of an antiblack world are the real source of degrading racial archetypes —and not their private inability to meet the unrealistic standards of white oppressors—then, they will not succumb to these archetypes by tragically identifying with them, or by neurotically avoiding them in slavish imitation of whites (as do the colonized petits-bourgeois of Fanon’s Black Skin, White Masks). Instead they will actively confront and resist them and the structures that produce them, as do the (Black and non-Black) makers of history in Wretched of the Earth. (Outside of Gordon’s Existentia Africana, the best brief description of potentiated double-consciousness can be found in Henry’s article “Africana Phenomenology: Its Philosophical Implications.”) This stance needs a positive self-conception of the colonized, in contrast with the Afropessimist position that defines Blackness, in Patterson’s term, strictly as ‘social death,’ i.e. as fully determined by the project of an antiblack world. Consistently with the Hegelian theory of recognition against which it nonetheless rises in critique, double consciousness implies the simultaneous acknowledgment of our human freedom to produce and sustain values as well as its limitation by social nonrecognition. This freedom is rejected in bad faith by our Afropessimist inscription outside of the human condition.

In fact, it can be argued that the ideal Afropessimist consciousness is not doubled, but single, and singularly racist. The wholly negative conception of what it means to be Black is especially evident in the works of Saidiya Hartman. Already in Patterson’s account, there is a deliberate focus on the formative role of the slave for the identity of the master, and a corresponding neglect of the slave's psychic life. Hartman dutifully threshes out the Nietzschean-Foucauldian implications in her Scenes of Subjection, where to be Afro-American is simply to be a victim of existential disruption by the slave trade; and maintained in that slavery to the present, even with our dubious legal ‘progress’ from irresponsible human property to the ‘burdened individual’ personhood of liberal contractual relations (1997: 115-123). The play of continuity and rupture in this work has the predictable effect of preserving us as slaves (i.e., as antiblack society has constructed us), but denying our Africanity (i.e., how our ancestors chose to construct themselves) as positive content in our resistance to enslavement. In discussing collective memory on the plantation, Hartman rejects even the search for African cultural survivals conducted by Blassingame, Stuckey, and other scholars as a mythological-primitivist search for an unrecoverable past (ibid 72-75). For Hartman, the horizon of Blackness is traced by the pendulous swinging of a lynched slave. But more than that: the very humanist project of liberating Black folk from the literal-figurative rope and lash is but another technique in the subjection of those who are constructed as Black. Like Foucault’s imprisoned madman in Discipline and Punish, the Black subject acquires their Black identity inseparably with their powerlessness. An acquisition that, by a double move, also constitutes the liberal white spectator as conscience-stricken liberator, as the empowered possessor of a conscience.

There is something to be said for Hartman’s hermeneutics of the white gaze; and no critical theorist can afford to be ignorant of the dialectic of freedom and slavery, of personal liberty and indebtedness, in modern liberal thought, least of all a Black theorist. The contradictions of white liberalism do concern us, no doubt; but where the majority of us must work, play, love, reflect, and die, they do not define us, even while they indicate the basic existential threat. Mute, dead objects cannot revolt against the possibility of having no possibilities. Unless they actually possess the human freedom to make the world other than it is at present, they could not possibly know or fight for what they would lose in the total objectification of real death.

Which brings us to the second prong of Afropessimist bad faith. According to this camp, anti-blackness supposedly pervades the entire world, so that no existing social or political tendencies within it can lead to Black emancipation. Consequently, the non-Black ‘allies’ of the Bandung World are bound to betray us once a common tactical goal has been achieved—Du Bois’s Dark Princess vision dissolves in a vat of Bollywood antiblackness. But since the social world is not a product of natural laws, but is sustained by free human activity, then it follows that voluntary human attitudes can make a difference in shaping the structures and outcomes of that world. The point here is that commitment to the project of a new world in spite of all apparent evidence of its futility has made a difference in the Black freedom struggles of the past, and can make a difference in the future, even if it’s not guaranteed to do so in our lifetime. Like Fanon, Sartre, and Gordon, this counter-argument emphasizes that the terrible weight of the past hangs on the literal nothingness that is human freedom; that to discard the choice of struggle on the heap of past failure, cannot save us from our burning consciousness of even that choice.

This has implications especially for the Afropessimist position on coalition-building. Let’s concede to the Afropessimist the antiblack structuration of the entire world. To then assume that any attempt to liberate oneself through coalition with the other victims of Western modernity is bound to be betrayed by non-Blacks, is nonetheless to reify an antiblackness that originates, after all, in the mutable attitudes of human beings. It’s to assume, like De Beauvoir’s polemical targets in The Second Sex, that what has always characterized relations between two antagonistic groups, always will. It’s to flee in bad faith from the anxiety of producing new strategies for Third World liberation, into a historically-grounded (merely factical) assurance that we can't collectively win because of the pervasive antiblackness that grips even our potential allies in the world of color. And then there is the real question of where custom’s inertia ends. Why shouldn’t the obvious normative roles played by heterosexism, national chauvinism, and other reactionary attitudes among Black people throughout the diaspora, similarly compromise Black liberation, but from within?

How the Afropessimist squares all of this with those passages throughout Fanon’s oeuvre that urgently call for solidarity with all Third World peoples in the project of a new humanism, even while he acknowledges antiblackness among Arabs, for example, is unclear. Maybe it’s by the same selective reading that, in their review of anticolonial freedom struggles, allows them to overlook the many instances of Black folks working successfully with non-Blacks in anti-colonial struggles (in e.g. the Working People’s Alliance of Guyana, or the various Third World coalitions in the US New Communist Movement). But what it cannot be is the product of an authentic confrontation with the subjective and objective risks incurred by joining our energies in good faith with all of decolonizing humanity.

#### 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.

#### Legal engagement is the only way for social movements to build sustained countervailing power to change the status quo. Ceding the terrain of law dooms the AFF.

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

[\*548] INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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## Cap

**No pornotroping impact, cultivates empathy doesn’t cause violence.**

**Gruen 17** [Lori Gruen, William Griffin Professor of Philosophy, and Professor of Feminist, Gender and Sexuality Studies and Science in Society, at Wesleyan University, “Expressing Entangled Empathy: A Reply,” *Hypatia*, Vol. 32, No. 2, Spring 2017, p. 452-462]

The psychological literature is also replete with discussions of empathy as coupled with a motivational state in order for helping action or pro-social behavior to occur.1 Generally, these “psychological” motivational states fall into two mutually exclusive general categories: self-interested motivation and altruistic motivation. If the self is understood as deeply relational, the distinction between these motivational states breaks down. And this is the third sense of motivation I want to mention. Attuned moral perception moves me to **act on behalf of the wellbeing of others who co-constitute my agency**. Directing one's empathetic attention toward others is also shaped largely by whether one is so motivated, so while entangled empathizing moves us to action, we can alter our empathetic focus by acts of will. The process of being moved by entangled empathetic attention and being moved to refine our empathy are part of the **dynamic process of developing our moral perception**.

When one is made aware of a shortcoming in her responsiveness or a failure of her empathetic attention, when she is able, in other words, to see that she is in a “bad” relationship, as I put it—by which I mean one of instrumentalization, exploitation, or violence, for example—she cannot maintain that relationship and hold onto the belief that she is engaged in loving or caring attention. That sort of attention is part of what it means to be a moral agent, I suggest, so one is at least going to be moved to change one's conception, and I would hope, that will also lead to behavioral changes.

But there is a **deeper resonance to the question “why care?”** that addresses a danger that has been mentioned to me on a number of occasions and that all of my critics discuss. That is a worry about the possibility of ever really, truly understanding and empathizing with another. In the book, I discuss a case worth repeating briefly here. Two wealthy black parents who raised their children to be cautious in white society were devastated in the aftermath of an incident in which their son, who was walking near the boarding school he attended in Connecticut, was called the “N” word. The son became scared and angry, and felt vulnerable. This incident had a negative impact on his schoolwork and his confidence. When the father, Mr. Graham, tried to get the attention of the administration at his son's school, he received little response. This led him to realize that he was no better able to understand the perspective of the white people to whom he reported the incident than of those who called his son the “N” word (Graham 2014).

In many ways Mr. Graham is right. White people in a culture of anti-black racism cannot understand the burden of racism. And if white people can't understand Black people, what hope is there to understand a chimpanzee in entertainment, a dairy cow, or a lab rat? **Perhaps entangled empathy is simply too optimistic** to think any sort of meaningful moral perception is possible.

Recently, I was asked by Frank **Wilderson**, whose work I much admire, **why** do I **care?** I got a better sense of the force of his question after reading his paper “‘Raw Life’ and the Ruse of Empathy.”2 In it Wilderson interrogates “an optimism that assumes relationality within and between all sentient beings.” His analysis is that there are some beings who are beyond relationality. “The explanatory powers of empathy and analysis are scandalized when confronted with the Black position, a paradigmatic location synonymous with slavery” (Wilderson 2013, 184). Following on the definition of slavery provided by Orlando Patterson as a permanent, violent domination of natally alienated and generally dishonored persons (Patterson 1988), **Wilderson sees Blackness as a form of social death**, a state of being deprived of relationality. So “even perceived moments of empathic identification with the Slave are ruses” (Wilderson 2013, 189), as one cannot empathize with objects or beings that are not in the relation. Further, he argues that if empathy is meant to facilitate and produce “civic relation and if anti-Blackness is the generative mechanism of this mode of production, then it becomes understandable how and why” (201) empathy is problematic.

There are two concerns here; the latter is not unlike the worry that Debes raises about epistemic injustice, although in a different register. Debes says “dominant social groups trade on existing, ‘collectively’ shared—perhaps we should say, mainstream—forms of social understanding to reach self- and interpersonal understanding. And disempowered groups are pressed to conform to these normalized, mainstream social understandings” ($$). If these normalized understandings require, as Wilderson says, the social death of Black people, and these understandings are what entangled empathy is relying on, then it looks like entangled empathy is in the service of anti-Blackness and should thus be rejected. Debes is right insofar as this form of understanding is meant to be full understanding, and he is also onto something if the understanding required for entangled empathy inescapably emerges from mainstream “narrative tropes.” **But I'm not sure why either needs to be the case**. Trying to fully understand is not the same as actually achieving full understanding. Understanding among those on the margins happens all the time. Indeed, following the insights of Black feminists, often those on the margins understand more than those at the center, as they have opportunities for understanding both.

What I take us to be doing when we are engaged in entangled empathetic moral attention is working through **complicated processes of understanding one another** and other animals in situations of differential social, political, and species-based power. Usually what we “get” is just a glimpse. We never really “know,” but too many people use the idea that we can't really know as an **excuse to opt out of working at it**. **I take this to be a failure of both imagination and moral agency**.

The second worry will be something I continue to work out, and that is a more robust description of relationality. On the relational ontology I envisage, there is no place beyond relations; anti-Blackness or speciesism, for example, are political and ethical relations that view whites and humans as justified in regarding Blacks and animals as fungible, disposable, and perhaps paradoxically, outside of relationality. But as I've suggested, **the relations we are in are not** always, perhaps not even often, **the sorts of things we choose**. Some relations I am forced into, some I seek to develop, some are unjust, some are harmful, some may even seek to forever deprive me of my subjectivity. And since we are constituted in various ways by these relations, when some relations make it hard to see ourselves and others, entangled empathy will seem almost impossible. But that these relationships are part of us means that we can, **indeed must**, work with them and try to change them for the better.

**We must recognize the trauma of oppressed groups on their own terms. This generates understandings of shared precarity, without Eurocentric bias**

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This lack of interest in the non-Western world is not unique, of course, to cultural critics but is shared by society at large. As Didier Fassin and Richard Rechtman point out in an anthropological study of trauma titled The Empire of Trauma: An Inquiry into the Condition of Victimhood (2009 [2007]), "trauma-or rather the social process of the recognition of persons as traumatized-effectively chooses its victims. Although those who promote the concept assert that it is universal, since it is the mark left by an event, study reveals tragic disparities in its use" (282). For example, humanitarian psychiatry- which I will have more to say about in the next chapter-for a long time ignored the African continent. While mental health support was already being routinely provided by Western aid workers to Croatians, Bosnians, Kosovars, Armenians, Romanians, Chechnyans, and Palestinians in the wake of natural disasters or political violence, Rwandans, Sierra Leoneans, Liberians, and Congolese-people long relegated to the margins of the circle of humanity-were initially denied such assistance in their hour of need (183-88; 282). Fassin and Rechtman also note that the 2004 tsunami in Thailand resulted in much greater international mobilization, including action around trauma, than the earthquake in Pakistan the following year, mainly because the tsunami affected Western tourists whereas no Westerners were involved in the earthquake (282). They explain these disparities as follows: [END PAGE 12]

Recognition of trauma, and hence the differentiation between victims, is largely determined by two elements: the extent to which politicians, aid workers, and mental health specialists are able to identify with the victims, in counterpoint to the distance engendered by the otherness of the victims. Cultural, social, and perhaps even ontological proximity matter; as does the a priori valuation of the validity of the cause, misfortune, or suffering, a valuation that obviously implies a political and often an ethical judgment. Thus trauma, often unbeknownst to those who promote it, reinvents "good" and "bad" victims, or at least a ranking of legitimacy among victims. (282)

In a thoughtful article on the contexts, politics, and ethics of trauma theory, Susannah Radstone similarly observes that

it is the sufferings of those, categorized in the West as "other", that tend not to be addressed via trauma theory-which becomes in this regard, a theory that supports politicized constructions of those with whom identifications via traumatic sufferings can be forged and those from whom such identifications are withheld. (25)

Judith Butler spells out the far-reaching consequences of such constructions in Frames of War: When Is Life Grievable? (2009), where she argues that the differential distribution of precarity across populations is "at once a material and a perceptual issue": "those whose lives are not 'regarded' as potentially grievable, and hence valuable, are made to bear the burden of starvation, underemployment, legal disenfranchisement, and differential exposure to violence and death" (25). A one-sided focus on traumas suffered by members of Western cultural traditions could thus have pernicious effects at odds with trauma theory's self-proclaimed ethical mission. If trauma theory is to adhere to its ethical aspirations, the sufferings of those belonging to non-Western or minority cultures must be given due recognition. As Jill Bennett and Rosanne Kennedy write in the introduction to their edited collection World Memory: Personal Trajectories in Global Time (2003), trauma studies in the humanities "must move beyond its focus on Euro-American events and experiences, towards a study [END PAGE 13] of memory that takes as its starting point the multicultural and diasporic nature of contemporary culture" (5).

The perils of appropriation

This is not to say, though, that any and all attempts by trauma theory to reach out to the non-Western other are necessarily a step in the right direction. After all, such efforts can turn out to reflect a Eurocentric bias just as well. This is true, for example, of the few descriptions of cross-cultural encounters that we are offered in Caruth's pioneering study Unclaimed Experience. l am thinking of her reading of the story of Tancred and Clorinda, her analysis of Sigmund Freud's Moses and Monotheism, and her interpretation of the film Hiroshima man amour, all of which are central to her formulation of trauma theory, yet which strike me as highly problematic instances of witnessing across cultural boundaries.

Caruth's treatment of the story of Tancred and Clorinda has been analysed very incisively by Ruth Leys (292-97), Amy Novak (31-32), and Michael Rothberg (Multidirectional Memory 87-96), to whose work the brief discussion of it that I will offer is indebted. In the introduction to Unclaimed Experience, Caruth quotes the passage from Beyond the Pleasure Principle in which Freud discusses an episode from Gerusalemme Liberata (Jerusalem Delivered), a sixteenth-century epic by the Italian poet Torquato Tasso:

Its hero, Tancred, unwittingly kills his beloved Clorinda in a duel while she is disguised in the armour of an enemy knight. After her burial he makes his way into a strange magic forest which strikes the Crusaders' army with terror. He slashes with his sword at a tall tree; but blood streams from the cut and the voice of Clorinda, whose soul is imprisoned in the tree, is heard complaining that he has wounded his beloved once again. (qtd. in Caruth, Unclaimed Experience 2)

Freud refers to this moment in the story as an example of the unconscious repetition of trauma: Tancred's unknowing killing of his beloved not just once, but twice, illustrates the repetition compulsion characteristic of trauma. Caruth expands upon Freud's reading of this moment, drawing attention to "a voice that is paradoxically released [END PAGE 14] through the wound" (2-3). She reads this scene as an illustration of the latency of trauma and the ethical address delivered through this belated knowing. A troubling aspect of Caruth's analysis is that in its drive to identify Tancred as a trauma survivor, it tends to obscure the wound inflicted on Clorinda. While Caruth cannot get round the fact that it is Clorinda's voice that cries out from the wound ("the wound that speaks is not precisely Tancred's own but the wound, the trauma, of another" [8]), for her reading to work she has to interpret Clorinda's voice as not exactly her own but as (also) that of the traumatized Tancred's dissociated second self (Leys 295-96): Clorinda (also) represents "the other within the self that retains the memory of the 'unwitting' traumatic events of one's past" (Caruth, Unclaimed Experience 8). Caruth thus effectively rewrites the wound inflicted on Clorinda as a trauma suffered by Tancred. Given that this episode concerns the killing of an Ethiopian woman by a European crusader, an orientalist dimension which Caruth does not acknowledge,3 her reading of this tale can be seen to illustrate the difficulty of trauma theory to recognize the experience of the non-Western other.4

I should add, though, that unlike Leys and Novak, who reject the very suggestion that Tancred may have been traumatized by his deed, I do not question Tancred's status as a survivor of (perpetrator) trauma.5 As Rothberg points out, Leys makes a "category error" by "elid[ing] the category of 'victim' with that of the traumatized subject": "The categories of victim and perpetrator derive from either a legal or a moral discourse, but the concept of trauma emerges from a diagnostic realm that lies beyond guilt and innocence or good and evil" (Multidirectional Memory 90).6 Calling someone a trauma survivor or trauma victim does not in and of itself confer any moral capital on that person, as both victims and perpetrators can suffer trauma. Nor do I share Leys's and Novak's tendency to identify Clorinda as the real trauma victim in this case. To quote Rothberg once again, "The dead are not traumatized, they are dead" (Multidirectional Memory 90). What I do find problematic about Caruth's reading of this episode is that Clorinda's experience is sidelined if not silenced altogether.7

This phenomenon is also noticeable in Caruth's interpretation of Freud's speculative account of the origin of Judaism in Moses and Monotheism, whose "central insight," according to Caruth, is that "history, like trauma, is **never simply one's own**," that "history [END PAGE 15] is precisely **the way we are implicated in each other's traumas**

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" (Unclaimed Experience 24). She reads Moses and Monotheism as "the site of a trauma" (Unclaimed Experience 20): a product of Freud's own situation on the verge of the destruction of the European Jews by the Nazis, the text inscribes the author's personal trauma, Caruth argues, while also linking it to the history of Jewish monotheism, which Freud interprets as a history of trauma. In Moses and Monotheism, Freud attempts to explain Jewish history through the analogy of the effect of trauma on the individual. He postulates that the Jewish religion is founded on the slaying of Moses, an Egyptian nobleman who adhered to the monotheism of the pharaoh Akhenaten. After Moses led the Hebrews out of bondage in Egypt, Freud maintains, he was murdered by them in the wilderness out of resentment for the harsh laws he had tried to impose on them. Repressing the memory of the murder, the Hebrews reverted to polytheistic idol worship and took on a new leader, also called Moses, who was eventually assimilated to the original Moses. However, after a period of latency, the collective sense of patricidal guilt led to the return of the Mosaic law and the reaffirmation of Judaism as a monotheistic religion by way of atonement. Stressing the aporia of a history propelled by an inaccessible traumatic pre-history, which resonates with the way in which the structure of Moses and Monotheism bears witness to Freud's own experience of Nazi persecution, Caruth suggests that Freud's text urges us "to rethink the possibility of history, as well as our ethical and political relation to it" (Unclaimed Experience 12).

According to Leys, however, Caruth "decisively alters the terms of Freud's analysis" by positing the example of the railway accident rather than the child's Oedipal story as paradigmatic of Freud's treatment of the history of the Jews as the history of a trauma:

Freud describes the experience of the Jews as a history of "what may properly be termed a traumatic experience" but which he characterizes as a murderous "crime" and the guilt-ridden return of the repressed. Caruth rejects Freud's castration model of the trauma in order to thematize the same story as the story of Jewish victimhood-as the history of a murder that, incredibly, "is not experienced [by the perpetrators] as it occurs," of an incomprehensible "missed" trauma that violently "separates" the Jews from Moses, of a traumatic "departure," a survival, and a literal [END PAGE 16] return-as if the Jews were victims and survivors of a completely unexpected, unintended, exogenous accident. (279-80)8

Leys discerns a pattern between Caruth's interpretation of the story of the murder of Moses and her reading of the story of Tancred and Clorinda: "Just as Caruth converts the Israelites who murdered Moses into passive victims of the trauma of an accidental 'separation,' so she converts Tancred into the victim of a trauma as well" (294). Unlike Leys, I do not question whether it is legitimate to consider perpetrators as trauma survivors. However, in this case too, I am troubled by the tendency to turn violence inflicted on a non-European other into a mere occasion for the exploration of the exemplary trauma suffered by the-in the terms of Freud's argument- European subjects responsible for that violence, which itself becomes obscured in the process. The Egyptian origins of Moses-duly noted by Caruth (Unclaimed Experience 13)-have received ample attention in recent years from scholars such as Jan Assmann (Moses the Egyptian: The Memory of Egypt in Western Monotheism, 1997) and Edward Said. In Freud and the Non-European (2003), for example, Said specifically focuses on Freud's provocative claim that the founder of Judaism was a non- Jewish Egyptian and its implication that Jewish identity, typically conceived as European, has a non-European aspect:

Let me return finally to Freud and his interest in the non-European as it bears on his attempt to reconstruct the primitive history of Jewish identity. What I find so compelling about it is that Freud seems to have made a special effort never to discount or play down the fact that Moses was non-European-especially since, in the terms of his argument, modern Judaism and the Jews were mainly to be thought of as European, or at least belonging to Europe rather than Asia or Africa. (50)

As with Tancred and Clorinda, then, an exemplary European trauma results from an act of violence against a non-European other whose true nature is concealed, in this case by the language of accident.

Also problematic, to my mind, is Caruth's discussion of Hiroshima mon amour, a film by Alain Resnais and Marguerite Duras which tells the story of a love affair between a Japanese architect and a French actress visiting Hiroshima to make a film about peace. In the film, [END PAGE 17] the affair triggers a chain of memories as the woman relates the traumatic experiences she suffered at the end of the Second World War in the French city of Nevers. The young German soldier she had fallen in love with was shot and killed on the last day of fighting, just before they were to leave the city together. She was subsequently submitted to public disgrace, followed by a period of imprisonment and near-madness in her parents' home. Having recovered, she left home permanently, arriving in Paris on the day the war ended, after the bombing of Hiroshima and Nagasaki. It is her presence in Hiroshima, another site of wartime trauma, and the facilitating role of the Japanese man, who lost his family in the bombing, that enables the woman to recount her story for the first time. According to Caruth, the film demonstrates her thesis that trauma can act as a bridge between cultures: it allegedly opens up "a new mode of seeing and of listening" to the spectators, "a seeing and a listening from the site of trauma," which it offers as "the very possibility, in a catastrophic era, of a link between cultures" (Unclaimed Experience 56). This interpretation seems to me to gloss over the lop-sided quality of the cross-cultural dialogue established in Hiroshima mon amour. After all, we only ever get to hear the French woman's story; the traumatic history of Hiroshima in general or of the Japanese man in particular remains largely untold. Hiroshima is reduced to a stage on which the drama of a European woman's struggle to come to terms with her personal trauma can be played out; the Japanese man is of interest primarily as a catalyst and facilitator of this process. Caruth notes in passing that the film "does not tell the story of Hiroshima in 1945 but rather uses the rebuilt Hiroshima as the setting for the telling of another story, the French woman's story of Nevers" (Unclaimed Experience 27), but the asymmetry of the exchange and the appropriation and instrumentalization of Japanese suffering in the service of articulating a European trauma do not stop her from holding up the interaction between the French woman and the Japanese man as an exemplary model of cross-cultural witnessing.9

Nor is she discomforted by the fact that the connection that is established in the film between the collective memory of atomic destruction and the-historically less significant-personal tragedy of a femme tondue would appear to magnify the latter and downplay or eclipse the former. As Nancy Wood points out in Vectors of Memory: Legacies of Trauma in Postwar Europe (1999), the film's "recourse [END PAGE 18] to analogy" generates unease in many viewers: "The discomfort that the film is still capable of provoking arises from the kinds of analogy it constructs between the personal memories of une femme tondue- women whose heads were shaven for (literally) 'sleeping with the enemy'-and the collective commemoration of an atomic conflagration" (185). In a footnote, though, Caruth argues that "the question of comparison" which made Hiroshima mon amour controversial has been "displaced or rethought" by the film (Unclaimed Experience 124n.14). As she points out, it is not possible to speak of comparison "in any simple sense" in relation to traumatic experiences: such partially unassimilated or missed experiences cannot be identified or equated, as this presupposes that they have been or can be "phenomenally perceived or made available to cognition" (Unclaimed Experience 124n.14). I am sympathetic to this argument-which I come back to at the end of Chapter 7-and I would not go so far as to claim that mass catastrophe and individual loss are simply equated with or analogized to one another. However, it seems to me that this does not invalidate the unease that many viewers feel about the vast difference in scale-unmeasurable though it may be-between the traumas that are linked together in Hiroshima mon amour.

Furthermore, Kali Tal has accused Caruth of exoticizing the Japanese actor by taking for granted his alleged unawareness of the meaning of the lines he says in French, a language he did not know and had to learn to speak phonetically. According to Tal, such a complete detachment from meaning is highly unlikely if not impossible, and would never be claimed for a European actor finding himself in the same situation. Overstating her case, she concludes that "Caruth's own tendency to exoticize the Japanese, to believe in the alien quality of the Asian actor, leads her to unquestioningly embrace an ethnocentric and racist perspective" ("Remembering Difference").

What these examples show is that breaking with Eurocentrism requires a commitment not only to broadening the usual focus of trauma theory but also to acknowledging the traumas of non-Western or minority populations for their own sake. In the next chapter, I will argue that the traumas of non-Western or minority groups must be acknowledged, moreover, on their own terms. This, it seems to me, is another area where trauma theory has tended to fall short.