# 1AC --- Forced Labor --- JCCC

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#### The contention is Forced Labor:

#### Pre-dominant court understanding of Antitrust is based on “market failure” that classifies harms only if they apply to the consumer --- That fails to address systemic risks like labor

Miazad 21 (Amelia Miazad is Founding Director and Senior Research Fellow of the Business in Society Institute at Berkeley Law., “PROSOCIAL ANTITRUST”, Prosocial Antitrust (March 11, 2021). Available at SSRN: https://ssrn.com/abstract=3802194 or http://dx.doi.org/10.2139/ssrn.3802194)

While courts **routinely dismiss noneconomic or “non-welfare” justifications**, precisely what procompetitive reasons come into play is, as Justice Stevens famously stated, “an absolute mystery”.242 As Professor John Newman points out, the “relevant case law reveals multiple competing approaches and seemingly irreconcilable opinions” on what constitutes “beneficial”.243 After all, whether a particular activity is beneficial necessarily begs the question— beneficial to what end? Professor Newman traces this confusion to the use of three different tests by courts:

Under the “market failure” approach, a valid justification is present if—and only if—the challenged restraint alleviates a market failure. Alternatively, the “competitive process” approach attempts to condemn restraints that harm (and bless restraints that benefit) “competition” itself or the so-called “competitive process”. Lastly, the “type of effect” approach appears to offer a shortcut: simply identify the effects of the challenged restraint, then ascertain whether they align with a pre-approved typology of virtuous marketplace effects (e.g., higher output, lower prices, etc.).244

This Article agrees with Professor Newman’s doctrinal, normative, and practical arguments in favor of the market failure test.245 Most contemporary courts also hold that “alleviating a market failure is an acceptable procompetitive justification.”246 But the market failure test is fundamentally at odds with the market reality of **increasing universal ownership**. Two limitations explain its inability to account for systematic and portfolio-wide risks. First, the market failure test relies on the prevailing consumer welfare standard.247 That generally means that a particular restraint of trade must alleviate a market failure by increasing consumer surplus in order for courts to deem it a valid procompetitive justification.248 By fastening market failure to consumer welfare, the market failure test becomes indistinguishable from the “type of effect” approach, which also focuses on measurable impacts on consumers including output and price. Second, **the market failure test assumes the perspective of a single market, preventing it from capturing portfolio-wide systemic risks** like climate change.

To be clear, this Article is not arguing that antitrust law should abandon the consumer welfare standard and expand its purview to encompass noneconomic impacts. Rather, it argues that **the consumer welfare standard is too narrow to account for economic impacts on a portfolio-wide level.** The **total welfare standard** is most closely aligned with the market reality of universal ownership, although it has been largely abandoned by courts.249 It seeks to maximize the total surplus of all participants in a market, including consumers and producers. The total welfare test’s aggregate value approach is more closely aligned with universal ownership, but it also analyzes an individual market—as opposed to market-wide impacts— because a so-called “general equilibrium analysis” is impractical. Developing a standard that aligns with the market reality of concentrated ownership is beyond the scope of this Article. This Article does argue, however, that **the current consumer welfare standard impedes collaboration to address systematic economic risks**, as the next Part explores

#### Forced labor has been privatized in the United States through a Prison Industrial Complex --- Only holding corporations responsible can create broad divestment

Prashar, 20 (Ashish Prashar, Global Chief Marketing Officer at R/GA. Ashish chaired the former Mayor London's Mentoring Initiative, graduated from the University of Westminster in London., 9-14-2020, accessed on 6-29-2021, Business Insider, "American businesses are raking in billions from the prison-industrial complex. It's time to get serious about dismantling this disgusting system.", <https://www.businessinsider.com/prison-industrial-complex-end-business-help-mass-incarceration-2020-9)//Babcii>  
\*Edited for grammar

Making money from a broken system **A "p**rison-**i**ndustrial **c**omplex" **is not possible without the "industrial" part**. Thousands of US businesses participate in this exploitation system, many publicly traded and household names. These **corporations have monetized crime and punishment** with the government's help and put profit over everything. They fight for positioning to siphon off their share of the [$80 billion](https://www.prisonpolicy.org/reports/money.html) in tax dollars spent annually to keep [2.3 million incarcerated](https://www.prisonpolicy.org/reports/pie2020.html),. Of that $80 billion total, tens of billions are then funneled into the private sector through vendor contracts with healthcare providers, food suppliers, prison contractors, and countless others. There are 4,100 corporations engaged in the Prison Industrial Complex, some of who support prison labor directly or through supply chains. In April, Worth Rises released [The Prison Industry: Mapping Private Sector Players (2020)](https://worthrises.org/theprisonindustry2020#block-b153f5e8252bbcf8827a) cataloging the participating companies and calling for immediate divestment from 180 large, publicly traded companies involved in the prison-industrial system. A lot of these companies are household names like Sherwin Williams and Stanley Black & Decker. In addition, dozens of boutique firms are dipping deep into the corrections-industry, like Wall Street Prison Consultants, which provides advice to white-collar offenders. Not just private prisons While private prisons attract most of the attention, the market for privatized services dwarfs that of privatized facilities. Private prisons are only [8% of the market](https://www.sentencingproject.org/publications/private-prisons-united-states/), with a total annual revenues of [$4 billion](https://www.bloomberg.com/news/articles/2019-07-17/how-border-crisis-brings-scrutiny-to-private-prisons-quicktake). By comparison, the correctional food-service industry alone provides the equivalent of $4 billion worth of food each year. Corrections departments spend at least [$12.3 billion](https://www.thenation.com/article/archive/prison-privatization-private-equity-hig/) on healthcare, about half of which is provided by private companies. Telephone companies, which can charge up to $25 for a 15-minute call, rake in [$1.3 billion](https://omnisperience.com/2020/02/27/salesforce-spends-1-3-billion-on-buying-vlocity/) annually. Incarcerated people also work, making everything from license plates to body armor vests and mattresses. In California, some even serve as firefighters. In New York, they made hand sanitizer during the pandemic, a hygiene product they were not allowed to use. But in some places, they are employed by major corporations such as Minnesota-based 3M. These American citizens get paid [8 to 15 cents an hour](https://www.prisonpolicy.org/blog/2017/04/10/wages/) for this labor. In the State of **Texas** where they **have them** [**picking cotton**](https://theintercept.com/2016/04/04/prisoners-in-multiple-states-call-for-strikes-to-protest-forced-labor/)**, they get paid nothing – an image of slavery**. Before the pandemic and Black Lives Matter protests, businesses weren't interested in taking a permanent stand fearing economic risks. Now is not the time for weighing economic risk or parsing profit margins. It's **time for US businesses to divest from the prison system** and play their part in overhaul of the justice system. Companies have acted before South Africa's Apartheid began to crumble under economic pressure between 1977 and 1986 as civil rights groups, labor organizations and a campus divestment movement took root and blossomed in the United States. In 1977, Rev. Leon Sullivan, a General Motors board member, wrote seven principles that companies operating in apartheid South Africa should follow. While some saw these "Sullivan Principles" as a smokescreen for companies with economic interests to stay in South Africa, they emboldened activists, student protesters and Black South Africans. [When Coca-Cola withdrew from South Africa in 1986](https://www.latimes.com/archives/la-xpm-1986-09-18-mn-11241-story.html) and sold its assets to Black South Africans as well as white, the move was a major victory for racial equality, but it was a necessity. The unified front of students, activists, shareholders and employees in the United States with activists in South Africa and the civil disobedience there forced the withdrawal. Companies shouldn't worry about alienating potential customers. Many Americans are demanding change. In a recent poll, [69% of Americans](https://abcnews.go.com/Politics/63-support-black-lives-matter-recognition-discrimination-jumps/story?id=71779435) say Black people and other minorities aren't treated equally in the justice system, a high-water mark. Businesses have to now back up words of solidarity with communities of color with action. How can businesses act? Given the scale of the system of mass incarceration and the extensive network of actors profiting from it, we will ultimately need a bold multi-pronged approach to effectively confront the prison-industrial complex. The approach should combine public, political, and financial pressure to abolition **(abolish) the current system. The blow to apartheid was** so **devastating because major corporations withdrew** from the apartheid economy, making the political environment more amenable to positive policy changes. **Companies must do the same today when it comes to the U.S. prison system**. First, we must divest by ending all financial relationships with companies that profit from or participate in the prison system. Public pension funds and university endowments must divest from companies that sell products and services to prisons. Secondly, **companies and organizations using prison labor must cease those activities** immediately. While there has been a slow departure from some companies, hundreds of others still support US prison labor. Economically disenfranchising prison laborers by paying them nothing or less than a dollar a day is as morally reprehensible as the chain gangs of Jim Crow. Finally, if 30 years ago, American companies could forego a foreign economic interest, they can eradicate racism and injustice at home. Every publicly traded US company should be required to adopt a form of the [Global Sullivan Principles](http://hrlibrary.umn.edu/links/sullivanprinciples.html). While there is debate on the efficacy of **social responsibility** pledges, if accountability is institutionalized, good can result. It's long past time to **shift our public dollars away from** building **prisons** and locking people up, and **towards education, school counseling, after-school programs, and restorative justice.** We will all have to look back on our actions in this moment and see how serious we were about justice and discover what side of history we and businesses were on. It's time we put people over profit and freedom over fear.

#### The profitability of penal labor drives the mass expansion of the Prison Industrial Complex --- That devours social wealth, drives out welfare programs, and supplants structures of racism --- Only creating effective movements solves

\*This is also a perm card --- Says combining movements good

Davis, 98 (Angela Davis, Davis is a former political prisoner, long-time activist, educator, and author who has devoted her life to struggles for social justice., 9-10-1998, accessed on 11-22-2021, Colorlines, "Masked Racism: Reflections on the Prison Industrial Complex", <https://www.colorlines.com/articles/masked-racism-reflections-prison-industrial-complex)//Babcii>

Imprisonment has become the response of first resort to far too many of the social problems that burden people who are ensconced in poverty. These problems often are veiled by being conveniently grouped together under the category “crime” and by the automatic attribution of criminal behavior to people of color. **Homelessness**, **unemployment**, **drug addiction**, **mental illness**, and **illiteracy** are only a few of the problems that disappear from public view when the human beings contending with them are relegated to cages. Prisons thus perform a feat of magic. Or rather the people who continually vote in new prison bonds and tacitly assent to a proliferating network of prisons and jails have been tricked into believing in the magic of imprisonment. But **prisons do not disappear problems**, they disappear human beings. And the practice of disappearing vast numbers of people from poor, immigrant, and racially marginalized communities **has literally become big business**. The seeming effortlessness of magic always conceals an enormous amount of behind-the-scenes work. When prisons disappear human beings in order to convey the illusion of solving social problems, penal infrastructures must be created to accommodate a rapidly swelling population of caged people. Goods and services must be provided to keep imprisoned populations alive. Sometimes these populations must be kept busy and at other times – particularly in repressive super-maximum prisons and in INS detention centers – they must be deprived of virtually all meaningful activity. Vast numbers of handcuffed and shackled people are moved across state borders as they are transferred from one state or federal prison to another. All this work, which used to be the primary province of government, is now also performed by **private corporations**, whose links to government in the field of what is euphemistically called “corrections” resonate dangerously with the military industrial complex. The dividends that accrue from investment in the punishment industry, like those that accrue from investment in weapons production, only amount to social destruction. Taking into account the structural similarities and profitability of business-government linkages in the realms of military production and public punishment, the expanding penal system can now be characterized as a “prison industrial complex.” The Color of Imprisonment Almost two million people are currently locked up in the immense network of U.S. prisons and jails. More than 70 percent of the imprisoned population are people of color. It is rarely acknowledged that the fastest growing group of prisoners are black women and that Native American prisoners are the largest group per capita. Approximately five million people – including those on probation and parole – are directly under the surveillance of the criminal justice system. Three decades ago, the imprisoned population was approximately one-eighth its current size. While women still constitute a relatively small percentage of people behind bars, today the number of incarcerated women in California alone is almost twice what the nationwide women’s prison population was in 1970. According to Elliott Currie, “[t]he prison has become a looming presence in our society to an extent unparalleled in our history – or that of any other industrial democracy. Short of major wars, mass incarceration has been the most thoroughly implemented government social program of our time.” To deliver up bodies destined for profitable punishment, the political economy of prisons relies on racialized assumptions of criminality – such as images of black welfare mothers reproducing criminal children – and on racist practices in arrest, conviction, and sentencing patterns. Colored bodies constitute the main human raw material in this vast experiment to disappear the major social problems of our time. Once the aura of magic is stripped away from the imprisonment solution, what is revealed is racism, class bias, and **the parasitic seduction of capitalist profit**. The **prison** industrial system materially and morally impoverishes its inhabitants and **devours** the **social wealth** needed to address the very problems that have led to spiraling numbers of prisoners. As prisons take up more and more space on the social landscape, other government **programs** that have previously sought to respond to social needs – such as Temporary Assistance to Needy Families – **are being squeezed out** of existence. The deterioration of public education, including prioritizing discipline and security over learning in public schools located in poor communities, **is directly related to the prison “solution.”** Profiting from Prisoners As prisons proliferate in U.S. society, **private capital has become enmeshed in the punishment industry**. And precisely because of their profit potential, prisons are becoming increasingly important to the U.S. economy. If the notion of punishment as **a source of potentially stupendous profits** is disturbing by itself, then the strategic dependence on racist structures and ideologies to render mass punishment palatable and profitable is even more troubling. Prison privatization is the most obvious instance of capital’s current movement toward the prison industry. While government-run prisons are often in gross violation of international human rights standards, private prisons are even less accountable. In March of this year, the Corrections Corporation of America (CCA), the largest U.S. private prison company, claimed 54,944 beds in 68 facilities under contract or development in the U.S., Puerto Rico, the United Kingdom, and Australia. Following the global trend of subjecting more women to public punishment, CCA recently opened a women’s prison outside Melbourne. The company recently identified California as its “new frontier.” Wackenhut Corrections Corporation (WCC), the second largest U.S. prison company, claimed contracts and awards to manage 46 facilities in North America, U.K., and Australia. It boasts a total of 30,424 beds as well as contracts for prisoner health care services, transportation, and security. Currently, the stocks of both CCA and WCC are doing extremely well. Between 1996 and 1997, CCA’s revenues increased by 58 percent, from $293 million to $462 million. Its net profit grew from $30.9 million to $53.9 million. WCC raised its revenues from $138 million in 1996 to $210 million in 1997. Unlike public correctional facilities, the vast profits of these private facilities rely on the employment of non-union labor. The Prison Industrial Complex But private prison companies are only the most visible component of the increasing corporatization of punishment. Government contracts to build prisons have bolstered the construction industry. The architectural community has identified prison design as a major new niche. Technology developed for the military by companies like Westinghouse is being marketed for use in law enforcement and punishment. Moreover, **corporations** that appear to be far removed from the business of punishment **are intimately involved** in the expansion of the prison industrial complex. Prison construction bonds are one of the many sources of profitable investment for leading financiers such as Merrill Lynch. MCI charges prisoners and their families outrageous prices for the precious telephone calls which are often the only contact prisoners have with the free world. Many corporations whose products we consume on a daily basis have learned that prison labor power can be as profitable as third world labor power exploited by U.S.-based global corporations. Both relegate formerly unionized workers to joblessness and many even wind up in prison. Some of the companies that use prison labor are IBM, Motorola, Compaq, Texas Instruments, Honeywell, Microsoft, and Boeing. But it is not only the hi-tech industries that reap the profits of prison labor. Nordstrom department stores sell jeans that are marketed as “Prison Blues,” as well as t-shirts and jackets made in Oregon prisons. The advertising slogan for these clothes is “made on the inside to be worn on the outside.” Maryland prisoners inspect glass bottles and jars used by Revlon and Pierre Cardin, and schools throughout the world buy graduation caps and gowns made by South Carolina prisoners. “For private business,” write Eve Goldberg and Linda Evans (a political prisoner inside the Federal Correctional Institution at Dublin, California) “prison labor is like a pot of gold. No strikes. No union organizing. No health benefits, unemployment insurance, or workers’ compensation to pay. No language barriers, as in foreign countries. New leviathan prisons are being built on thousands of eerie acres of factories inside the walls. Prisoners do data entry for Chevron, make telephone reservations for TWA, raise hogs, shovel manure, make circuit boards, limousines, waterbeds, and lingerie for Victoria’s Secret – all at a fraction of the cost of ‘free labor.’” Devouring the Social Wealth Although prison labor – which ultimately is compensated at a rate far below the minimum wage – is hugely profitable for the private companies that use it, the **penal system** as a whole does not produce wealth. It **devours** the **social wealth** that could be used to **subsidize housing** for the homeless, to **ameliorate** public **education** for poor and racially marginalized communities, to **open free drug rehabilitation** programs for people who wish to kick their habits, to **create a national health care system**, to **expand programs to combat HIV**, to **eradicate domestic abuse – and**, in the process, to create well-paying jobs for the unemployed. Since 1984 more than twenty new prisons have opened in California, while only one new campus was added to the California State University system and none to the University of California system. In 1996-97, higher education received only 8.7 percent of the State’s General Fund while corrections received 9.6 percent. Now that affirmative action has been declared illegal in California, it is obvious that education is increasingly reserved for certain people, while prisons are reserved for others. Five times as many black men are presently in prison as in four-year colleges and universities. This new segregation has dangerous implications for the entire country. By segregating people labeled as criminals, prison simultaneously fortifies and conceals the structural racism of the U.S. economy. Claims of low unemployment rates – even in black communities – make sense only if one assumes that the vast numbers of people in prison have really disappeared and thus have no legitimate claims to jobs. The numbers of black and Latino men currently incarcerated amount to two percent of the male labor force. According to criminologist David Downes, “[t]reating incarceration as a type of hidden unemployment may raise the jobless rate for men by about one-third, to 8 percent. The effect on the black labor force is greater still, raising the [black] male unemployment rate from 11 percent to 19 percent.” Hidden Agenda Mass incarceration is not a solution to unemployment, nor is it a solution to the vast array of social problems that are hidden away in a rapidly growing network of prisons and jails. However, the great majority of people have been tricked into believing in the efficacy of imprisonment, even though the historical record clearly demonstrates that prisons do not work. Racism has undermined our ability to create a popular critical discourse to contest the ideological trickery that posits imprisonment as key to public safety. **The focus of state policy is rapidly shifting from social welfare to social control.** Black, Latino, Native American, and many Asian youth are portrayed as the purveyors of violence, traffickers of drugs, and as envious of commodities that they have no right to possess. Young black and Latina women are represented as sexually promiscuous and as indiscriminately propagating babies and poverty. Criminality and deviance are racialized. Surveillance is thus focused on communities of color, immigrants, the unemployed, the undereducated, the homeless, and in general on those who have a **diminishing claim to social resources**. Their claim to social resources continues to diminish in large part because law enforcement and **penal measures** increasingly devour these **resources**. The prison industrial complex has thus created a vicious cycle of punishment which only further impoverishes those whose impoverishment is supposedly “solved” by imprisonment. Therefore, as the emphasis of government policy shifts from social welfare to crime control, racism sinks more deeply into the economic and ideological structures of U.S. **society**. Meanwhile, conservative crusaders against affirmative action and bilingual education proclaim the end of racism, while their opponents suggest that racism’s remnants can be dispelled through dialogue and conversation. But **conversations about “race relations” will hardly dismantle a prison industrial complex** that thrives on and nourishes the racism hidden within the deep structures of our society. The emergence of a U.S. prison industrial complex within a context of cascading conservatism marks a new historical moment, whose dangers are unprecedented. But so are its opportunities. Considering the impressive number of **grassroots projects** that **continue to resist the expansion of the punishment industry**, it **ought to be possible to bring** these **efforts together** to create radical and nationally visible **movements** that can legitimize anti-capitalist critiques of the prison industrial complex. It ought to be possible to build movements in defense of prisoners’ human rights and movements that persuasively argue that what we need is not new prisons, but new health care, housing, education, drug programs, jobs, and education. To safeguard a democratic future, it is **possible and necessary** to weave together the many and increasing strands of resistance to the prison industrial complex **into a powerful movement** for social transformation.

#### US contribution to forced labor is not just domestic --- The Courts recent decision in the Nestlé and Cargill cases sets a precedent that gives full immunity for companies profiting from forced labor not in the U.S

Conley, 21 (Julia Conley, Julia Conley is a staff writer for Common Dreams., 6-21-2021, accessed on 9-22-2021, Children's Health Defense, "‘Dangerous Precedent’: Supreme Court Sides With Food Giants Nestlé, Cargill in Child Slavery Case", https://childrenshealthdefense.org/defender/supreme-court-nestle-cargill-child-slavery/)//Babcii

Human rights advocates denounced a Supreme Court decision last week in favor of the U.S. corporate giants Nestlé USA and Cargill, which were sued more than a decade ago by six men who say the two companies were complicit in child trafficking and profited when the men were enslaved on cocoa farms as children. The Supreme Court [ruled](https://www.nytimes.com/2021/06/17/us/supreme-court-human-rights-nestle.html?action=click&module=Spotlight&pgtype=Homepage) 8-1 against the plaintiffs, saying they had not proven the companies’ activities in the U.S. were sufficiently tied to the alleged child trafficking. The companies had argued that they **could not be sued in the U.S. for activities that took place in West Africa**. Neal Katyal, former acting solicitor general under the Obama administration, represented the two companies and also argued that they could not be sued for complicity in child trafficking because they **are corporations, not individuals**. Writing at Slate last December, Mark Joseph Stern [called](https://slate.com/news-and-politics/2020/12/neal-katyal-supreme-court-nestle-cargill-child-slavery.html) Katyal’s position “radical” and “extreme,” detailing the nine justice’s skepticism about his defense of the companies — but the court ultimately sided with him. The plaintiffs, who are from Mali and say they are survivors of child trafficking and slavery in Côte d’Ivoire, filed their lawsuit under the Alien Tort Statute, an 18th century law which allows federal courts to hear civil actions filed by foreigners regarding offenses “committed in violation of the law of nations or a treaty of the United States.” In recent years the Court has limited when the law can be invoked in court, arguing it cannot be used to file a lawsuit when the offense was committed “almost entirely abroad,” [according to](https://www.nytimes.com/2021/06/17/us/supreme-court-human-rights-nestle.html?action=click&module=Spotlight&pgtype=Homepage) the New York Times. Lawyers for the plaintiffs argued that **Nestlé and Cargill have total control over** the **production** of cocoa in Côte d’Ivoire, where child labor is widespread and where the men said they were forced to work long hours and to sleep in locked shacks at night. The U.S. Department of Labor recently [reported](https://earthrights.org/media/scotus-rules-that-u-s-corporations-can-profit-from-child-slavery-abroad/) that the use of child labor on family farms in cocoa-growing areas of Côte d’Ivoire and Ghana increased from 31% to 45% between 2008 and 2019. The **corporations “should be held accountable for abetting a system of** child **slavery**,” [said](https://www.cnbc.com/2021/06/17/supreme-court-rules-in-favor-of-nestle-in-child-slavery-case.html) Paul Hoffman, a lawyer for the plaintiffs. The U.S. Court of Appeals for the 9th Circuit [ruled](https://earthrights.org/media/scotus-rules-that-u-s-corporations-can-profit-from-child-slavery-abroad/) in October 2018 that Nestlé and Cargill couldn’t avoid the lawsuits, but writing for the Supreme Court majority on Thursday, Justice Clarence Thomas said the plaintiffs had failed to establish that the companies’ conduct “occurred in the United States … even if other conduct occurred abroad” and that the companies made “major operational decisions” in the U.S. EarthRights International, which filed an amicus brief with the court on behalf of the plaintiffs, called the ruling “a giant step backward for U.S. leadership on international law and protecting human rights.” “The ruling **implies that U.S. corporations** whose executives decide, from comfortable American boardrooms, to profit from murder, torture and slavery abroad **cannot be sued in U.S. federal courts** for violating international law,” [said](https://earthrights.org/media/scotus-rules-that-u-s-corporations-can-profit-from-child-slavery-abroad/) Marco Simons, general counsel for the organization. “This ruling has disturbing implications for future victims of human rights abuses seeking justice against businesses in U.S. courts. This ruling also **sets a dangerous precedent,** **giving corporations impunity** for profiting from human rights abuses.” Organizer Bree Newsome noted the irony of the ruling on the day the U.S. Congress passed legislation recognizing Juneteenth — the day Union soldiers arrived in Texas and informed Black people who had been enslaved that slavery had ended with the Civil War. “In light of the U.S. Supreme Court’s refusal today to protect victims of corporate human rights abuses, it is imperative that Congress take action,” said Simons. “We call on Congress to **clarify U.S. courts’ responsibilities to enforce** international **law,** reassert U.S. leadership on human rights, and **provide remedies to victims** of the most serious human rights abuses **by enacting binding legislation** that holds corporations accountable for violating human rights.”

#### That drives the practice globally --- The spread of global competition and increased market concentration drive massive pressure for forced labor

Hunt, 21 (Breann Hunt, Bachelors degree from Brigham Young University majoring in Strategic Management, April 2021, accessed on 6-21-2021, Scholarsarchive.byu, "Eliminating Forced Labor in American Corporations and Their Supply Chain: Existing Solutions and Failures", https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1346&context=byuplr)//Babcii

**Twenty-one million individuals across the globe are victims of forced labor** at any given moment. Included in this statistic are millions of children subjected to “restriction of movement, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, [and] debt bondage.”4 Annual profits of forced labor come to a total of $150 billion USD for American companies per year, spread over a multitude of industries and global conglomerates.5 Increased consumer production has created fierce price competition among national corporations, driving subcontractors to resort to illegal and immoral methods to gain labor contracts. Low prices for consumer goods are often paid by the most vulnerable populations. The **financial benefit of forced labor creates little incentive for perpetrators to abandon the practice** on moral grounds. The competitive advantage organizations gain from unethical supply chain practices is a lucrative incentive to continue illegal behavior. Human rights organizations often present emotional pleas to governments, corporations, and the general public to demand systematic change, but these organizations lack the power to attack the **global and widely entrenched issue of forced labor**. These third-party efforts, while laudable in their activism, seek redress in the abstract, as **current legal systems are unprepared to litigate on the global stage**. With yearly revenues of $90 billion, Nestle’s profits rival the GDP of entire nations and possess global influence. In 2005, six plaintiffs alleged that they were enslaved on [Nestle’s] plantations and **sued Nestle** and its parent companies in Doe v. Nestle for aiding and abetting their enslavement.6 Despite public awareness and pending legal action, **Nestle made no change to their supply chain practices**, and in 2015--a full decade after the initial attempt at legal action--the company admitted to human rights violations in its Asian supply chain.7 It should be noted that the 2005 claims were from victims in Africa, thus highlighting the widespread, global scope of the company’s behaviors. The lack of legal action likely enabled Nestle to continue illegally sourcing food products. Nestle has never faced legal consequences for its role in human rights violations; instead, the firm released reports as a result of public outcry. However, reports and research can only go so far in moderating the ethics of billion-dollar companies, particularly when voluntary reporting is done by the company itself. The fact remains that illegal and inhumane labor conditions have persisted despite increasing public awareness of the existence of forced labor conditions. Watchdogs and whistleblowers have appealed to public sentiment in an attempt to enforce good behavior from billion-dollar organizations. However, consumers have been unable to create meaningful change in an economic market with an oligopoly or monopoly that restricts buying power. Indeed, the case of Doe v. Nestle has not caused any meaningful legislation to be passed and has only recently been appealed to the Supreme Court for further consideration on behalf of the plaintiff’s claims. The lack of effective legislation and cries for change in this matter prove that this issue has gone ignored, preventing a clear legal consensus from emerging. Supreme Court justices remain divided on the issue, including the role of the judiciary in the interpretation of existing laws. In Doe v. Nestle, Justice Brett Kavanaugh claims, “[T]his case really is a case, I think, about the proper role of the judiciary as compared to the proper role of Congress here in fleshing out the Alien Tort Statute.”8 It is past time for the American legal system to **recognize corporate culpability in the** regular, egregious **violations rife in global supply chains**. The author of this Article will examine existing legal solutions and their failures, while expanding on Justice Kavanaugh’s question concerning the expansion of legislation.

#### US consumption drives forced labor --- altering US behavior is key

Global Slavery Index, 18 (GLobal Slavery Index, The 2018 Global Slavery Index provides a country by country ranking of the number of people in modern slavery, as well as an analysis of the actions governments are taking to respond, and the factors that make people vulnerable. , 7-18-2018, accessed on 10-10-2021, Minderoo Foundation, "More than 400,000 modern slaves are exploited in the United States.", <https://www.globalslaveryindex.org/news/more-than-400000-modern-slaves-are-exploited-in-the-united-states/>)//Babcii

One in every 800 people in the United States is working under forced labor conditions – new data revealed today. The findings are part of the Global Slavery Index 2018, the world’s most comprehensive research on modern slavery, launched today by Walk Free. The Index revealed that more than 400,000 people are working as modern slaves in the United States. Assessing the prevalence, measurement of vulnerability and assessment of government response to the issue, modern slaves were primarily working in domestic work, agriculture and farm work, travelling sales crews, restaurant or food services, and health and beauty services **Globally**, imports were a **key** driver of modern slavery, with the United States as the biggest purchaser of goods at-risk of being produced through forced labor, importing more than $144 billion(1) a year. **U.S. consumer demand was key to fueling this supply**, with electronics (laptops, computers, mobile phones), garments, fish, cocoa and timber the highest value categories of imported items. The U.S. total is three times that of the second-largest G20 importer, Japan ($47bn), and nearly ten times more than its neighbor Canada ($15bn). Mr. Andrew Forrest, Founder of Walk Free, said: “The United States is one of the most advanced countries in the world yet has more than 400,000 modern slaves working under forced labor conditions. This is a truly staggering statistic and demonstrates just how substantial this issue is globally. This is only possible through a tolerance of exploitation, demonstrated by the billions of at risk goods being brought to the United States to fuel consumer demand for affordable products.”

#### Dependence on forced labor disrupts governance and spills over to all other forms of violence by increasing fractionalization and social stratification

Cockayne et al., 20 (James Cockayne et al., Professor of Global Politics and Anti-Slavery at University of Nottingham. He received his Ph.D. in War Studies from King's College London in 2015, and LL.M. from NYU School of Law in 2005., 2020, accessed on 9-23-2021, Developingfreedom, "Developing Freedom The Sustainable Development Case for Ending Modern Slavery, Forced Labour and Human Trafficking", https://www.developingfreedom.org/wp-content/uploads/2021/01/DevelopingFreedom\_MainReport\_WebFinal.pdf)//Babcii

8. Slavery weakens governance Slavery is an institution in which one private group – exploiters – use the power of the State, or its forbearance, to capture rents from labour coerced out of another private group. The victim group is not 66 only deprived of its economic agency, but also, frequently, excluded from political power or even political participation. The impacts on governance are profound and long-lasting, with important implications for how we understand the relationship between efforts to address modern slavery under SDG 8.7 and efforts to achieve SDG 16, which deals with peace, justice and strong institutions. Countries in Africa that participated in the transatlantic slave today trade suffer increased **social stratification and violence**, most likely because involvement in slavery **impeded State formation** and **increased ethnic fractionalization**.109 Slavery degraded the strength of domestic legal institutions and political entities already in place in Africa.110 And throughout the Americas, the institutionalization of slavery tended to reduce State investment in public goods and institutions, such as **roads and schools**.111 One study, of Peru, suggests that communities that had been subjected in the past to forced labour had legacies of **low education** and **high land ownership concentration**, leading to low provision of public goods, poor integration into road networks and higher levels of subsistence agriculture.112 One reason that involvement in slavery may have such long-lasting effects on governance is that it appears to destroy social capital – trust. Trust is increasingly recognized as a prerequisite for economic development.113 In Africa, one study found that individuals’ trust in their relatives, neighbours, coethnics, and local government were all lower if their ancestors were heavily affected by the slave trade. This seems to be because slavery so corrodes other institutions and governance that it generates new social norms, beliefs and values based on mistrust, which are transmitted inter-generationally.114 Perhaps unsurprisingly, past involvement in large-scale slave trade also seems to correlate to involvement in contemporary conflict.115

#### Antitrust is key --- Lack of public accountability means only remedial options based on market power are sufficient

Hunt, 21 (Breann Hunt, Bachelors degree from Brigham Young University majoring in Strategic Management, April 2021, accessed on 6-21-2021, Scholarsarchive.byu, "Eliminating Forced Labor in American Corporations and Their Supply Chain: Existing Solutions and Failures", https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1346&context=byuplr)//Babcii

D. Forced Labor and Its Effect on the Free Market and Antitrust Violations The federal government of the United States has developed legislation to promote rigorous business competition in the marketplace. Examples include antitrust laws and SEC requirements which ensure fair competition and freedom of information in the market by breaking up market monopolies and issuing property rights. In relation to supply chain management, antitrust laws enforced by the FTC examine firms’ supply chains. The FTC claims that, “A vertical [supply chain] arrangement may violate the antitrust laws [...] if it reduces competition among firms at the same level (say among retailers or among wholesalers) or prevents new firms from entering the market.”22 Supreme Court precedent dictates that antitrust issues be examined through a reasonable framework that includes a consideration of the effect of a firm’s actions on competition within the market. The FTC claims that, “[price advantage through supply chain] must be weighed against any reduction in competition from the restrictions.”23 While price advantage is not illegal, gaining market high ground through forced labor creates an unfair vertical supply chain that tilts economic competition in favor of the company with human rights violations. According to the FTC, “a vertical arrangement may violate the antitrust laws, however, if it reduces competition among firms at the same level (say among retailers or among wholesalers) or prevents new firms from entering the market.”24 Sourcing goods through illegal labor reduces competition by unfairly lowering the cost of goods sold for firms, thus enabling them to undercut competitor pricing. This does have the effect of reducing the advantages of free market competition and prevents new firms from entering the market. For example, a study done on the price increase upon Fair Trade certification of coffee brands (an industry often associated with forced labor in its supply chains), researchers found that price increases did not reflect the consumer’s willingness to pay.25 A Fair Trade certification is a third party supply chain certification that audits participating businesses to ensure their subcontracted labor is well paid and free from slave labor.26 The study further claims that, “Fair Trade Certification has an impact of raising the price of coffee 22% compared to non-Fair Trade coffees,” while “Fair Trade Certification increases the premium consumers are willing to pay for coffee by 1.1%.”27 Thus, while **brands that secure their supply chains from** human rights violations must necessarily **increase their prices**, **there is not a corresponding willingness to pay the additional price f**rom consumers. The study cited deals with a common consumer good, coffee, where firms compete with similar prices and four brands represent more than 55% of total market share.28 Other common consumer goods have similar industry structures, such as Nestle, where large competitors compete on price for market share. When industries compete on price, the likelihood of ethical supply chain efforts creating an effective competitive advantage with the majority of consumers decreases. While there is certainly evidence of forced labor within coffee supply chains,29 **ethically sourced** coffee **brands have not made a significant entrance** into the mainstream market. This represents how dominant, global firms with no legal repercussions for their human rights violations suppress the expansion of ethically sourced U.S. competitors. In the Supreme Court filings for Doe v. Nestle, competitors claim that Nestle violated their right to the free market. According to several firms who had taken measures to ethically source their product, “As slave-free cocoa and chocolate companies, [we] are at a competitive disadvantage to companies that source cheap cocoa produced with forced child labor. The higher production costs associated with compliance with international human rights norms require [us] to sell chocolate at higher prices.”30 If other firms are operating with **legally sourced labor**, they **will be less likely to sustain profits and compete** in markets where some firms are illegally benefiting from cheaper labor. Economic scholars Kynak et al. argue that, “The competitive environment, heating up with the emergence of new and powerful competitors in the markets with regard to all sectors, tempts entities to perform unethical maneuvers in their commercial relations with the aim of gaining a competitive advantage.”31 Unethical maneuvers to gain competitive advantage in the market are often hard to detect and costly to investigate. Indeed, “transaction and auditing costs of the entities increase due to the fact that such operations based on the derivation of unfair advantage are difficult to detect.”32 As mentioned above, becoming a Fair Trade certified brand requires rigorous standards and will increase the cost to the firm for goods sold. This includes associated overhead costs. Other certifications for sustainability such as the B Lab, which includes similar standards for labor within the supply chain, represent high costs to firms who decide to engage in such third-party labels.33 While these certifications are not necessary for firms to engage in ethical practices, they represent the overall cost disadvantage for firms that refuse to compromise ethical sourcing standards for price cuts. Thus, for this reason, national **antitrust legislation can define the federal** government’s **obligation to address forced labor in supply chains**, and provide additional context in courts for understanding the quantifiable damage done to free markets by illicit supply chain management.

#### Attaching liability is key to weed out violations deep in supply chains or in foreign nations

Dechert, 20 (Dechert, Dechert LLP’s White Collar, Litigation, and Labor and Employment practices have been active in providing pro bono representation to victims of forced labor and human trafficking for many years., 8-12-2020, accessed on 6-21-2021, Dechert, "Corporate America Can Be A Powerful Force For Good To Root Out Modern-Day Slavery", https://www.dechert.com/knowledge/onpoint/2020/8/corporate-america-can-be-a-powerful-force-for-good-to-root-out--.html)//Babcii

The **Department Of Justice** Can Use Section 545 to Combat Slave Labor Under Section 1589 Because of its breadth, Section 545 can be a **highly effective tool for combatting slave, forced, and child labor**—not because Section 545 can reach the actual execution of these repugnant labor practices, but because it can attach to th e very products that result from such abhorrent conduct when those products enter (or attempt to enter) the American marketplace. In the same way that federal law has proscriptions against allowing certain U.S. technology from being exported to certain countries, such as Cuba, Iran, and North Korea,54 the United States also has a variety of laws that prohibit products from being imported into the country when those products do not reflect our nation’s values, such as products made with slave, forced, or child labor; counterfeit products; and adulterated or misbranded products under the Food, Drug, and Cosmetic Act (and its implementing regulations), among others. Recall, Section 545 applies to “merchandise” that enters “contrary to law” or that passes through the supply chain with a defendant’s knowledge that it made entry “contrary to law.” That means Section 545 can work in tandem with anti-slave labor laws such as Section 1589 to result in the **criminal prosecution of anyone**—whether a **company or person**—who knowingly imports or brings into the United States, any merchandise made from labor or services that are the result of “force, threats of force, physical restraint, or threats of physical restraint” **anywhere in the world**. And, the government can take the position that those who transact in such goods at **various points in the supply chain** are **not beyond the reach of** federal **prosecutors** either. That’s because the law applies equally to those who “receive[], conceal[], buy[], sell[], or in any manner facilitate[] the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States” in violation of anti-slave labor laws.55

#### Holding companies liable for their supply chain is the only realistic incentive to solve

Smith, 13 (David Smith, University Scholar @ Baylor University, May 2013, accessed on 6-27-2021, Google, "The Economics of Slavery: A Market-Based Approach of Combatting Human Trafficking")//Babcii

Extending Liability Companies, aware or not, can help to perpetuate slavery by seeking to minimize costs without always paying attention to the methods they employ. The demand for slavery can be decreased by extending liability for slave labor to companies higher up the chain that are benefitting from it, whether or not they are aware of the slavery. Currently, **without liability, companies have very little incentive to pursue the socially beneficial course of action** with regard to slave labor. Consider a company that may or may not have slavery in its supply line, but they do not know. Without liability, the only incentive for them to take precautions would equal the product of the cost to their company if the public were to find out that they benefitted from slave labor, and the probability of such an exposure occurring. This amount of precaution the company takes will rise as public awareness rises, because the probability of an exposure will be higher. **The company is responsible only for** their potential lost **profits** and reputation, and so the level of precaution that they take over their supply lines will not be as high as the socially optimal level.67 Now consider when the company can be sued and prosecuted for slavery, which they may or may not know about, taking place somewhere in their supply lines. The company will be incentivized to take the socially optimal level of precautions. Its potential costs of an exposure are now much higher—they include both the public ill will and economic penalties. Now the company will choose to incur costs of taking precautions as long as those costs remain less than or equal to the product of the expected cost of an exposure and the probability of that happening. Companies will vigilantly, by their own accord, seek to disentangle themselves with human trafficking because of the potential losses they could incur. And the higher public awareness has become, the more effect extended liability will have on companies because they are less likely they would be to get away with benefitting from human trafficking. Then the very companies that were **benefitting** from slavery **would become the ones that strike the strongest blows** against human trafficking. If companies were the ones doing the work to root out human trafficking, out of their own economic self-interest, because the penalties of failing to do so could be significant, **forced labor would take a significant hit**. Along with the potential benefits of lower prices provided by slave labor, companies now compare those against the imminent possibilities of fines, convictions, and the loss of public approval, which is important for any company to maintain. **The penalties must be severe** enough to be sufficiently costly to companies in order to actually effect change. Investigations must be thorough and effectual. However, the government cannot do all of this; government does not have the resources or time to investigate every place slavery might be found in supply chains coming into the United States. Put the **adequate incentives in place, and companies will do the work themselves** of putting an end to slavery, which no longer benefits them.

#### Antitrust may have been an elitist tool, but it can be re-designed to protect public interests

V. Sodano 2010. University of Naples Federico II, Department of Agricultural Economics. “Food system and climate change: the false premises of antitrust Policy”

Introduction According to recent estimates (IAASTD, 2008), the global food system is currently accountable for at least 30% of the global GHG emissions that cause climate change. Considering also emissions by indirect activities associated with food production and distribution, such as home storage and refrigerators, waste disposal, transportation by final consumers and so on, this estimate may rise dramatically to as high as nearly 50% of total emissions (Grain, 2009). Agribusiness corporations, backing a model of food production and distribution that functions by converting oil into food, are largely responsible for these huge emissions. Influencing the behaviour of food TNCs in such a way as to shift towards a more sustainable food model may greatly contribute to tackling global warming. Actions to induce food corporations to assume a more sustainable form of conduct come from both the private and the public sector. On the private sector side initiatives come from consumers (individuals and consumer associations), environmental associations and non governmental organizations. On the public sector side, there are at least three kinds of intervention: (1) direct regulation, based on a command-and-control approach; (2) ‘soft regulation’, including self-regulation, use of incentives, awards and accreditation systems, market-based initiatives, disclosure obligations and educational campaigns; (3) definitions of duties of corporations, through corporate law and competition policy. The paper stresses that, given that reducing GHG emissions is comparable to **a public good**, **only state intervention may be expected to be effective**. Moreover, given that corporations cannot be granted the same moral status as natural persons, even soft regulation, which requires some form of corporate social responsibility and therefore of corporate morality, cannot be effective. With regards to state intervention the paper analyzes the role of **competition policy**, showing how it **can help** in fighting global warming, **provided that it overcomes** the over thirty year lasting dominance of **the ‘Chicago paradigm’**. Global warming mitigation: the role of public and private sector It is a matter of fact that induced climate change is representative of a tragedy of the commons, a typical collective action problem. Maintaining a stable climate has the structure of a public good exhibiting both the property of non excludability and non rivalry. The free riding problem, i.e. the fact that non contributors can benefit from others’ GHG reductions without taking on costs themselves, prevents private rational actors from engaging in mitigation efforts. Beyond being a public good, the protection of a stable climate that fits human biological and economic needs, can be considered to be a human right. In particular, it is of the kind of second generation human rights, i.e. economic and social rights, grounded in the notion that government has affirmative obligations to protect individuals from deprivation of the basic material necessities of life. In the case of public goods, economic and social theories based on rational choice models hold that the market (i.e. the private sector) fails to supply them. Therefore**, the only effective provider is the state**, as the latter has the precise political mandate to accommodate for general public welfare against scattered private interests. With regards to human rights the general view is that the state has the ultimate duty to uphold them. The state can intervene either directly or indirectly. Direct interventions include: public investments in global warming mitigation; setting compulsory standards in defence of low emission production and consumption activities; imposing human rights duties on corporations for climate change and environmental harm; implementing tort liability laws that make private actors pay for damage to climate and environment. Indirect interventions include: market based incentives aimed at promoting private climate friendly behaviour; embracing a voluntary corporate social responsibility (CSR) approach that shifts the burden of public interest onto corporations, which are deemed to possess other-regarding preferences and moral values. In this paper it is claimed that only direct intervention can be effective because, in the case of market-based instruments, it may apply the same sources of market failure that the intervention seeks to correct. The voluntary CSR approach is not viable because it hinges on the false premise that corporations have the same moral status as natural persons. The moral status of corporations endorsed by scholars like French (French, 1984) is to be rejected when the three necessary conditions for moral agency are examined: the ability to intend an action; the ability to perform an action; the ability to autonomously choose an intentional action. In the case of conglomerate collectives, such as corporations, these conditions are not fulfilled (Ronnegard, 2006: 82) and therefore they do not qualify as moral agents conceived as distinct from their members. Consequently, corporate moral responsibility attributions to collectives as distinct from their corporate members are illegitimate. Competition policy and climate change: the perspective of the Chicago school Given that only direct intervention by the state can assure adequate levels of global warming mitigation, the issue to be addressed is what role competition policy, among other forms of public intervention, can have in promoting corporate climate friendly behaviour. Competition policy originated in the US in 1890 with the Sherman Act. In the European Union the first antitrust regulation was set by the treaty of Rome in 1957. There are commonly described three historical phases of US antitrust law implementation, the first dating from 1890 to 1940, the second from 1945 to 1975 and the third from 1970 to the present (Viscusi et al., 2005). These three phases have been characterized by different economic and political theories incorporating two different ideologies of the market and the state: the evolutionary vision and the intentional vision (Page, 2008). The evolutionary vision views the market, framed solely by laws on property and contracts, as a mechanism for facilitating free exchanges among countless individuals in the pursuit of their best interests. In this vision, the market without state intervention naturally tends to a perfect competition ideal form destroying monopoly. On the contrary, the intentional vision views the market as a mechanism within which powerful interests can coerce consumers, labour and small businesses. In this vision markets tend toward monopoly unless government intervenes. The political economic theories corresponding to these two visions are the laissez-faire and the welfare state theories. The more the intentional vision is preferred to the evolutionary vision, the greater is the scope and the enforcement of antitrust law, and vice versa. The Sherman Act and the first period of antitrust law implementation embodied a compromise between the two visions. Notwithstanding the faith in the market, coherent with a strong liberal theory of the state, it was recognized as a matter of fact that monopolies and extreme economic power concentrations actually occur in the real world, producing social inequalities and injustice. At that time, state intervention was intended as a way to promote social justice and mediate among class conflicts in society. In the second period, the intentional view prevailed. Stemming from the disillusionment with markets during the Great Depression, the New Deal initiated the era of the welfare state based on the idea, supported by the growing economic literature on market failure, that economic state intervention should be legitimated by efficiency more than by equity concerns. The years between 1950 and 1970 are the golden era of antitrust legislation. The view of the markets taken up by the Court was that of recognition that coercion is the reality of market relationships. That is to say that in contrast with the previous ideological faith in the freedom of contracts, it was acknowledged that in a market transaction each party may be forced by the bargaining power of the other to accept unfair payments and obligations. Along with these views, the then prevailing theory of industrial organization, the structure-conduct-performance paradigm, facilitated a strong enforcement of antitrust legislation, holding that the mere measure of market share was sufficient to witness the presence of market power and monopoly inefficiencies. By the mid-1970s the evolutionary view completely dismissed the intentional view with the uprising of the so called Chicago school of antitrust. Chicago scholars applying neoclassical economics maintained that unfettered markets always lead to the best social outcomes. They pointed out that many of the practices that the courts had been viewing as harmful to competition and economic welfare, such as vertical restraints, may instead improve economic efficiency. Moreover they contested the structuralist view by claiming that a firm’s large market share may signal superior efficiency and that, consistently with the contestability theory (Baumol et al., 1982), freedom of entry is the only parameter to be scrutinized by antitrust laws. The general wisdom of the Chicago school was that state intervention and regulation is always harmful to the general interest. The Chicago ‘revolution’ has made competition policy a useless instrument for reaching goals of general interest such as providing public goods and promoting social justice. **In order to make competition policy a useful instrument against global warming,** it is necessary to reject some assumptions of the **Chicago antitrust school** and revive instead the conventional wisdom of the previous approaches in the wake of the intentional view. Among the assumptions to be scrutinized are those related to the three following issues: the theory of the firm; the nature of corporation; the goals of antitrust policy. The Chicago approach endorses a neoclassical theory of the firm where the firm is defined by a technical production function. The neoclassical theory of the firm, even in its modern neo-institutional version that accounts for transaction costs, explains a firm’s behaviour exclusively through the efficiency argument (exploitation of scale and scope economies). According to Chicago scholars, large size and above-normal returns must be due to efficiency differentials between firms. In their world made of equilibria and complete contracts, power-seeking behaviours are not conceivable (Raghuram and Zingales, 1998). Organizational, institutional and cognitive problems addressed by alternative theories (such as managerial, evolutionary, property rights, and behavioural theories) are dismissed as trivial. With regards to the legal debate on the nature of corporations (the latter defined as economic organizations whose members are granted limited liability by incorporation statutes), the Chicago view is consistent with the Nexus-of-Contracts theory, which contrasts the two alternative theories, namely the Legal Fiction and the Real Entity theories (Ronnegard, 2006). The Nexus-of-Contracts theory depicts the corporation as a web of contracts among all the members, which implies that it should not be regarded as a separate legal entity from the shareholders and that rights and duties can be defined only with regards to its members. Because the corporation is the result of a free contract, it is not dependent upon state grants and the same act of incorporation (granted by the state) is only a shorthand way of obtaining a contractual situation equivalent to that which could materialize through the private contracting of individuals. This conception of corporation is based on a libertarian ideology that says that corporations ought to merely be a commercial instrument for furthering the ends of the incorporating parties. Because corporations are not autonomous entities, any moral status (and therefore social responsibility) is ruled out, and because they are not a ‘creature’ of the state but the result of free contracts, they cannot be given rules and duties by the state. Therefore, one cannot expect them to provide public goods, such as climate stabilization, either voluntarily or compulsorily. Finally, as regards the goals of antitrust, the Chicago school states that antitrust policy ought to deal only with **consumer losses** due to high prices and/or output restrictions (Burns, 2006). Any equity concern about wealth distribution or unfair business practices is dismissed. For instance, in the Chicago view low final prices generally signal efficiency and practices like predatory pricing, reciprocal selling and cross-subsidization by conglomerates, unfair procurement contracts, and so on, are given little attention. All these three sets of assumptions entail that corporations pertain to the private more **than to the public sphere** and that antitrust pertains to the economic more than to the political sphere. In consequence, corporations should not be required to seek public goals (like providing public goods such as climate stabilization) and antitrust should not be required to seek goals like equity and justice (among which climate justice) but should only pursue economic efficiency in terms of low consumer prices. Competition policy and climate change: reversing the false premises of the Chicago school Stemming from the intentional vision, and in opposition to the evolutionary vision of the Chicago school, **the previous assumptions can be reversed in such a way as to justify a wider scope of antitrust policy** able to encompass the goal of climate stabilization. The first hypotheses to be reversed are those concerning the theory of the firm and the nature of the corporation. Firms cannot be described purely as technical production functions but as institutions (as economic theory had to acknowledge after the seminal work of Coase of 1937) that in some way substitute the market with power as means of resource allocation. Like states, firms exercise power in various forms, either inside their organizational boundaries or outside, over their competitors, their suppliers, their customers and the same state, through lobbying and bribing. Modern corporations are firms which, through the limited liability and other rights granted by the state (such as unlimited life span, unlimited asset acquisition, complete flexibility and mobility in business conduct, constitutional rights equal to those of natural persons), possess even superpowers (Nace, 2003; Korten, 2001), i.e. powers that cannot be enjoyed by a single individual and even less (because of territorial limits) by a single state. Because corporations are legal persons, with specific rights granted by the state, their nature cannot be described through the Nexus-of-Contract theory endorsed by the Chicago School. Their nature is better described by the Legal Fiction theory. The Legal Fiction theory essentially says that the corporation is merely an abstract creation of law which is granted to an association of individuals. The corporation is an artificial legal entity with an existence distinct from the incorporating members and exists entirely at the discretion of the state. The Legal Fiction theory differs from the Nexus-of-Contract theory which does not recognize the corporation distinct from its members and does affirm that it is independent from the power of the state because it is the result of free contracts by individuals. The Legal Fiction theory also differs from the Real Entity theory that considers corporations to be real, social organisms that possess a will and life of their own, with characteristics that are distinct from their individual members. Similar to the Nexus-of-Contracts theory, the Real Entity theory rejects the notion that corporation is a creation or grant from the state. However, differently from the Nexus-of-Contracts theory, the Real Entity theory claims that corporations ought to be granted legal rights as natural persons, rights which are owed to the corporation itself as a separate organism and are not derived from the rights of the individual members. The Legal Fiction theory is the only theory on the nature of corporations that is consistent with the advocacy of an antitrust regulation aimed at directly controlling and limiting the scope of activity of corporations. Because corporations are legal persons they can be given rights and duties. Nevertheless, because they are not natural persons, as instead envisaged by the Real Entity theory, they do not automatically enjoy basic rights (like the rights to free speech and due process of law) and do not possess moral responsibility. Because they are creatures of the state, they do not have their own life and in the divide between the private and public sphere they can be put somehow on the public side. Shifting from the idea of corporations as private efficiency-seeking organizations to the idea of corporations as social bodies enjoying large powers by virtue of state grants allows us to recognize that corporations may have an important role in addressing general social problems like global warming. Two arguments must be considered. First, because the power of corporations, including the power to affect global warming, depends on state grants, state regulations and obligations imposed on corporations in order to contribute to climate stabilization cannot be considered as illegitimate limitation to private freedom (as envisioned by Chicago scholars and neo-liberalists). Such regulations and obligations should instead **be considered a due act of governance** involving subjects (state regulators and corporations) that both pertain to the public sphere. Secondly, obligations imposed on corporations may be of the kind of human rights duties in case of environmental harm (Mabaquiao, 2002). It is worth noticing that rights are, after all, a response to the problem of power; in particular human rights are asserted in order to protect individuals from abuse of power by states. When one recognizes that many TNCs are really as powerful as or more powerful than many states, it does make sense to treat them as duty-holders, with the same obligations as the states to uphold human rights (Sinden, 2007). It is also important to notice that, because according to the Legal Fiction theory corporations do not possess moral responsibility, we cannot rely on CSR or voluntary codes of conducts as ways to protect the public from environmental harm and any power abuse made by corporations. The second set of hypotheses to be reversed is that concerning the definition of the scope of antitrust policy. It is general wisdom that antitrust policy should prevent excesses in exercise of power by large firms. The difference between the Chicago School and alternative approaches based on the intentional view is with the kind of power at stake. The Chicago school only considers market power in the form of high consumer prices. Alternative approaches instead look at different kinds of power: the bargaining power towards suppliers and employees; the power to choose technologies and products with different environmental impacts; the power to influence the political arena; the power to ‘capture’ regulators; the power to influence cultural and social values; and even more. If antitrust policy has to deal with all these kinds of power then it must widen its scope, adding to the economic goal efficiency, social and political goals, such as business fairness, distributive equity, environment protection, enforcement of human rights and so on. In this perspective, **antitrust policy should provide incentives** (either positive or negative) **for business firms to pursue public goals**, such as global warming mitigation. Conclusion The global food system is populated by many large TNCs (Etc.Group, 2008). These corporations have de facto become a key part of the fabric of global environmental governance. In their role as investors, polluters, experts, manufacturers, lobbyists and employers, corporations are central players in environmental issues. While necessary, voluntary action on the part of corporations and consumers is not alone sufficient to mitigate the worst effects of global warming. However, in the food sector, voluntary actions have been weak and sparse so far (Cogan, 2006). For instance in the Ceres report (CERES, 2008), which rates firms by their achievements in climate-related corporate governance, there are no companies from the food sector among the top ten firms. Among the bottom twelve there are instead three food giants: ConAgra, Bunge, and PepsiCo. Climate stabilization, as in general environmental protection, is a public good and as such is not provided by the private sector but needs public intervention. Among the many kinds of public intervention, the paper has focused on antitrust legislation. At its origin, antitrust legislation was conceived as a means to mitigate power wielded by large corporations in society. With the spread of neo-liberalism from the mid-1970s, the Chicago School radically changed the meaning and the scope of antitrust laws, with drastic changes in its enforcement (Mueller, 2009). The general claim of this paper is that it **is necessary** to go back to the original spirit of antitrust legislation which endorses an idea of corporation as an artificial powerful legal entity created by the state in order to serve the public interest. Only in this way can large firms, in particular TNCs in the food sector, **be expected to** comply with environmental regulations and **guarantee human rights.**

#### Plan: The United States federal government should expand the scope of its core antitrust laws to prohibit forced labor\* as an anticompetitive business practice

\* Labor done because of force, threats of force, physical restraint, or threats of physical restraint. Including but not limited to domestic servitude, child labor, bonded labor, penal labor, and forced sex

#### The 1AC’s method of in depth studying and scenario analysis are critical to effective antitrust enforcement

O’Keeffe, 17 (Siún O’Keeffe, Strategy advisor, Netherlands Authority for Consumers and Markets., Nov 2017, accessed on 9-14-2021, Sci-hub, "Use and Importance of Market Studies in Modern Competition Enforcement", https://sci-hub.se/https://doi.org/10.1093/jeclap/lpx081)//babcii

Market studies too, can ultimately lead to swifter problem-solving. They allow us to examine a complicated market and establish how it works. This can prove **invaluable to assessments of whether or not particular activities are harmful**. Take the Online Hotel Booking Monitor that was published by EU competition authorities in February 2017. The Monitor examined empirical evidence that showed that many hotels were unaware of the legality or otherwise of the clauses controlling their prices. Also, it revealed no evidence of increased competition in markets where both wide and narrow across platform parity clauses were prohibited, in comparison to markets where only the wide APPA was stopped (through commitments). It is an example of crossborder number-crunching cooperation between 11 member states, including ACM, and the European Commission (in a sector in which authorities are often criticised for a lack of cooperation). ACM recently conducted an online video streaming study, with a focus on online video advertising. The study showed the intricate working of a swiftly moving multi-sided market. Online video platforms compete heavily for consumer attention. This battle primarily takes places in the fields of video-content and new service provision. The study suggested that none of the online video platforms currently has a dominant position in online advertising (it did not further explore content issues). The large, international platforms such as YouTube and Facebook face competition on these markets, at present, from each other and from smaller competitors. Online advertisements can be placed in a number of ways. In addition, there are many different companies that sell advertising space and place advertisements. Advertisers are able to choose the type of advertisement, and choose with whom they wish to do business, and they take advantage of these opportunities. There is also sufficient competition between the companies that facilitate the trade of advertising space. Personal data-sets are becoming more and more important in online advertising. However, the study suggested that the large data-sets of established platforms are not an insurmountable barrier for being able to enter this particular market. This study reveals a dynamic market where one player has a certain degree of market power, and **explores scenarios showing potential problems** that could arise. In-depth knowledge of how a market works allows the authority to intervene more quickly in the future, if necessary with interim measures, when a problem does arise. It allows us to combine ‘thinking fast’, with ‘thinking slow’, and it helps to waylay knee-jerk legislative reactions. Interim measures and quick interventions can be invaluable to prevent situations of harm arising. However, they do not replace empirical studies and thorough investigation based on the examination of facts and data. In the digital age, despite all the pressures, there is also a need to heed William Henry Davies’ advice to take the ‘time to stand and stare’ not in the pursuit of leisure, but rather in the pursuit of fact-based decision-making.

#### The process of doing research and proposing solutions is key to effective policy formation and preventing movement splintering

McGough, 13 (Maureen McGough, an attorney and internationalresearch partnership specialist in NIJ’sOffice of Research Partnerships. BA in psych @ The Catholic University of America, Doctorite in Law @ George Washington University Law School, Feb 2013, accessed on 6-29-2021, Ojp, "Ending Modern-Day Slavery: Using Research to Inform U.S. Anti-Human Trafficking Efforts", https://www.ojp.gov/pdffiles1/nij/240701.pdf)//Babcii

Despite **growing awareness** of the issue and an influx of resources from such influential bodies as the United Nations and other intergovernmental organizations, foundations, nongovernmental organizations and the U.S. government, the field is still **hampered by its inability to measure the size and scope of trafficking**.4 The data used to estimate the prevalence of human trafficking in the U.S. are lacking in scope and quality at the federal, state and local levels.5 The lack of reliable data and a **dependence on inadequate evidence** have fueled **disagreement among anti-human trafficking movements** in this country, and some researchers have criticized the issue as unsubstantiated and estimates of the problem as dubious.6 Recent estimates of people trafficked into the U.S. each year, for example, have varied widely from a low of approximately 14,500 to a high of approximately 50,000.7 Unfortunately, challenges also exist in gauging the effectiveness of the criminal justice system’s response. Rates of identification, investigation and prosecution are of limited value in determining the effectiveness of U.S. responses to human trafficking because the data supporting prevalence estimates are unreliable. **Research can play an invaluable role** in understanding the criminal justice system’s ability to respond to trafficking and in identifying obstacles that hinder current efforts. The need for robust research is all the more pressing **given** restricted **budgets and declining resources**. At a time when governments increasingly are looking to use evidence-based practices, **policymakers and practitioners are looking to** the **research** community to produce the data needed to analyze the impact of anti-trafficking efforts. The problem can be cyclical — without accurate estimates of the prevalence of human trafficking, it can be **difficult to know how to allocate resources** to study the issue. The U.S. State Department’s annual compendium of countries’ anti-human trafficking efforts, the Trafficking in Persons Report, recognizes this data deficiency and recommends that the U.S. improve the data and analysis of human trafficking cases at the state and local level.8 NIJ has funded a number of projects to improve data collection and analysis of the issue. This article discusses one recent study that looked specifically at the challenges facing state and local criminal justice systems.

#### Reject ethical purity --- Legal solutions may not be perfect but they are needed

Hall, 14 (Kathleen Hall, Senior reporter, BA in english lit @ University of Sussex, Postgraduate in journalism @ Nottingham Trent University, 3-31-2014, accessed on 6-28-2021, Law Gazette, "Human rights and the bottom line", https://www.lawgazette.co.uk/commentary-and-opinion/human-rights-and-the-bottom-line/5040611.article)//Babcii

Today no one in their right mind would consider the abolishment of child labour a good move purely because the business case stacked up. But being able to make an **economic case as well as a moral one** can be expedient in achieving the goal. The notion that these arguments can be **mutually reinforcing** was made in the Law Society’s Business and Human Rights Advisory Group's recommendations in response to the United Nations Guiding Principles on Business and Human Rights. These principles, endorsed by the UN in 2011, create a ‘**corporate responsibility** to respect human rights’. The advisory group argued that there is a strong business case for the legal profession to follow the guiding principles, as they are ‘increasingly being reflected and referred to in law, regulation, contracts and dispute resolution’. Law Society president Nick Fluck said that adoption will ‘ensure our profession retains a competitive advantage in what is an increasingly globalised marketplace’. In a globalised economy the **profit motive can be a powerful force** for change. Sadly, humanitarian reasons alone are not always enough to attract attention. But start talking about reputational damage and impact on the bottom line and organisations will start listening. Similar arguments have been made for the introduction of anti-corruption policies and the extension of whistleblowing protections. Yes these are good things to do, but the compelling argument is the economic one – namely that these policies help prevent firms from imploding due to malpractice. Enron is a good example here. And having **a business case for doing the right thing does not** automatically **undermine the moral imperative**. Nick Grono, chair of charity Walk Free, makes the point well in his article in the Guardian urging campaigners to ‘make the economic case for ending slavery’. Most firms are seeking further global expansion, so being able to appeal to them using the 'competitive advantage' argument for adopting human rights principles must be worth a shot. After all **when it comes to ending violations** of human rights, surely the **right response is the one that brings results – regardless of underlying motive.**

#### Especially in the context of Antitrust --- Scenario and economic analysis is key to catalyze support and extract concessions

Grono, 13 (Nick Grono, Australian human rights campaigner who heads the Freedom Fund – the world's first private donor fund dedicated to ending slavery. a law degree with first class honours from the University of Sydney. He also holds a Masters in Public Policy from Princeton University., 8-15-2013, accessed on 6-27-2021, the Guardian, "The economic case for ending slavery", https://www.theguardian.com/global-development-professionals-network/2013/aug/15/economic-case-for-ending-slavery)//Babcii

Instead all of us in the **anti-slavery** organisations **must start working** together **to effectively make the case to governments** and the private sector **of** the **economic** benefits of eliminating slavery, **over** and above **the unarguable moral case** to end this atrocity. In today's world, profit is usually a positive measure. Without profit we have recessions and misery; we have stagnant wage growth and depressed living standards; and the poor remain mired in poverty. So to associate the most egregious forms of human exploitation with profits may inadvertently conflate slavery with something good. And given the logic of basic economics, which tells us a reduction in profit is usually a bad thing, the implication could be that successful efforts to eliminate slavery-derived profits will damage the global economy. But this is not the case, and the error derives from framing the issue wrongly. The reality is that while slavery does produce profits for criminal slaveholders and traffickers – it also generates massive costs and losses to the wider economy, over and above the unimaginable human suffering. Tackling slavery means not only stripping the criminals of their illegal profits, but persuading governments that an investment in ending slavery will return massive dividends. When I visit enslaved villages in northern India, I do not find productive contributors to the Indian economy. I see starved, beaten, oppressed human beings struggling to survive. Multiply the lost labour productivity by the [27 million people](http://rendezvous.blogs.nytimes.com/2013/06/20/27-million-people-said-to-live-in-modern-slavery/) estimated to be enslaved today – greater than the entire population of Australia – and it becomes apparent what massive damage slavery is doing not just to people's lives but to the broader economy. The real economic damage is, in practice, much worse than this simple calculation would suggest. In the case of sexual exploitation consider the economic and social costs stemming from organised crime, a cash based economy resulting in unpaid taxes and the opportunity cost of having millions of otherwise healthy workers removed from the productive economy. Factor in the tragic reality that enslaved women often die young. Or take the case of the many millions in forced labour. There are massive opportunity costs to the wider economy of having able-bodied workers operating in conditions where they are unlikely to be working at full capacity, due to the absence of normal incentives. When slaves are freed, they contribute significantly to the economy. Those enslaved know how to work, and when given a chance to work for themselves and support their own families, they work hard. Motivated, their productivity climbs and so does their consumption – food and medicine, clothes and housing, everything they were denied in slavery. Freed slaves do their best to educate their children, knowing this is a powerful buffer against slavery. Longitudinal research following villages from slavery to freedom has shown a significant "freedom dividend." Focusing on the **economic** costs **is not to ignore the unimaginable suffering of those enslaved** and their families and communities. Far from it. It is about **constructing arguments best designed to drive** the **policy** action required to end this atrocity. Sadly, governments and the private sector **are not easily swayed** into action **for purely humanitarian reasons**. If they were, there would not be 27 million people living in slavery right now. For cash-strapped governments working out how to allocate limited taxpayer dollars, economic arguments are often far more powerful than humanitarian ones. And private sector donors want to invest in a way that generates both social and economic good. Just consider how effectively the international public health sector has changed its narrative. Vaccinating children or helping people living with HIV has moved from being the right thing to do, to also being about the percentage increase in GDP providing these medicines will produce. But to persuade government and the private sector, **we need** robust data in support of **the economic case**. The anti-slavery sector possesses much of the data, but fragmentation in the space often prevents it from being effectively shared and analysed. There **needs to be more** collaboration and **willingness to** share information. And funders need to **invest in filling the research gaps,** and in **pulling together** all the available data **to help make the powerful** economic **case**.

#### Lack of legal education allows special interests to cement forced labor

Guinn, 14 (David Guinn, Guinn is the Senior Scholar in Judicial Ethics, Education and Research at the Administrative Judicial Institute within the New York City Office of Administrative Trials and Hearings. , 2014, accessed on 10-10-2021, Jstor, "Defining the Problem of Trafficking: The Interplay of US Law, Donor, and NGO Engagement and the Local Context in Latin America on JSTOR", <https://www.jstor.org/stable/20486699)//Babcii>

VIl. CONCLUSION

Few people question trafficking's troubling **pervasiveness** or the fact that it represents a serious abuse of human rights. However, as happens all too frequently, the **legal developments intended to address the problem of trafficking have been driven by events that engaged public attention** and outrage, **leading to political movements for legislation shepherded along by special interest groups**. In the rush to remedy the perceived wrongs, these legal actors move from identifying the problem to implementing corrective actions **without engaging in** the serious **research and reflection** necessary to accurately measure and define the problem, thereby leaving it subject to misperceptions and misunderstandings that hinder the accomplishment of their **ultimate goal**. The object of this article has been to promote the neces sary reflection and identify the areas requiring further research.

#### CSR and movements both fail to effectuate change absent antitrust enforcement --- Only tying information to legislation can create effective investments

Hunt, 21 (Breann Hunt, Bachelor’s degree from Brigham Young University majoring in Strategic Management, April 2021, accessed on 6-21-2021, Scholarsarchive.byu, "Eliminating Forced Labor in American Corporations and Their Supply Chain: Existing Solutions and Failures", https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1346&context=byuplr)//Babcii

E. Current Legislative Efforts in Forced Labor Reduction and Policing The United States federal government has a legal obligation to remedy illicit practices in the supply chains of American companies. However, some may argue that the federal government should not interfere in free market operations due to volunteer efforts by human rights organizations and public advocacy groups that have come to prominence in recent years. Current legal arguments suggest leaving the ethics of human rights violations to the court of public opinion. Logically, if the public can successfully keep businesses from engaging in forced labor in their supply chain through social pressure, there is little need for government intervention. To this end, it is necessary to examine existing legislation and its effectiveness in deterring forced labor as well as voluntary public efforts to reduce human rights violations committed by American companies. Legislation has been limited in this regard, but recently, attempts to police the ethicality of supply chains have been instated. The State of California has attempted to end the practice of forced labor by enacting the California Transparency in Supply Chain Act of 2010. A decade after its inception, the California Transparency in Supply Chain Act has been critiqued by scholars and investors alike. The declared purpose of the CTSCA is to “help California consumers make better and more informed purchasing choices.”34 The CTSCA requires businesses worth over $100 million in California to “disclose on their websites their efforts to eradicate slavery and human trafficking from [their] direct supply chain for tangible goods offered for sale.”35 However, the Act “only requires that covered businesses make the required disclosures, even if they do little or nothing at all to alter their supply chains.”36 Human rights organizations classify the CTSCA as “more symbolic than substantive in nature.”37 Despite the lack of enforcement and means of policing, the act does provide a basis for creating reporting that can be compared across firms. One common critique of **c**orporate **s**ocial **r**esponsibility (CSR) reporting is that voluntary reporting is extremely arbitrary and varies by firm. Legislation such as the CTSCA can standardize the reporting initiatives, though admittedly, the CTSCA **does little to create meaningful change** in companies’ supply chains without the power to enforce more than reporting statistics. The CTSCA is one of the most widespread examples of modern supply chain legislation. To date, no other states have made similar moves to adopt such legislation. Internationally, the United Kingdom has passed the Modern Slavery Act of 2015,38 which includes a supply chain disclosure clause similar to CTSCA. As of 2021, the United States government has not passed similar legislation combatting modern slavery. F. Third-Party Efforts in Forced Labor Reduction and Policing Voluntary efforts to monitor and improve supply chain human rights violations by third party organizations currently include researching existing work conditions and possible solutions, but these efforts do little in the implementation of systematic change. The theory of change behind third party organizations relies on the assumption that the public will put pressure on firms if given compelling narratives of workplace conditions. Organizations striving to end forced labor in supply chains include, but are not limited to, the Fair Labor Association, Know the Chain, and Corporate Human Rights Benchmark (CHRB). These organizations have contributed to a greater understanding of research techniques to identify how supply chains exploit workers globally. CHRB reports specifically on the largest global companies by name and industry. Know the Chain similarly generates reports for companies and investors to voluntarily elect to adopt better supply chain practices. In each case, these supply chain watch dogs are connected to a vast network of other international rights organizations that promote the UN Sustainable Development Goals and other priorities geared towards bettering conditions for all humankind. However, like the results of the California Transparency in Supply Chain Act, these NGOs struggle to make a concrete and sustainable impact. Though they are clearly able to find information concerning human rights infringements in global supply chains, the **information only yields value when condemned by courts**. In many ways, these **efforts are isolated from legislative efforts**, which reduces their effectiveness. In sum, the CTSCA and third-party voluntary efforts focus primarily on reporting yet fall short in implementing real change. Existing precedent for proving corporate injury has so far been limited. These ineffective efforts to penalize global supply chains who engage in forced labor de-incentivize investors from progressing, accepting, and promoting ethical supply chains.39 However, further development on the issue of ethical supply chain management may come to fruition in the future. As recently as July 21, 2020, the SlaveFree Business Certification Act was introduced to the United States Congress. The bill would require reporting of supply chain violations through external audits and certification of slave-free labor. Ultimately, the bill proposes that “the Secretary may assess punitive damages in an amount of not more than $500,000,000 against a covered business entity.”40 The proposed Slave-Free Business Certification Act draws on the precedent of the CTSCA by requiring public disclosure of supply chains. It remains to be seen whether this approach to legislating supply chains in the United States will have a similar effect as that of the California Supply Chain Act. I V. Conclusion The author proposes that a more direct approach to supply chain violation be adopted in conjunction with the Slave-Free Business Certification Act or in coordination with SEC or FTC regulations. It is clear that third party organizations have research and analysis capabilities and methodologies that can be utilized to assess corporate injury. In order for claims of corporate injury to be sustained in antitrust regulation cases or SEC information injunctions, the Supreme Court requires clear proof of injury. In accordance with existing capabilities in supply chain analysis, this article demands that trusted supply chain organizations include specific metrics relating to competitor injury. Upon proof of competitor injury, the author argues that **antitrust laws should be** **applied to cases of forced labor** within supply chains, as previously outlined. The author concedes that clear competitor injury must be proven through existing Antitrust definitions of injury, but argues that in the presence of a multiplicity of NGOs and ineffective legislation, resources can be reallocated by both governments and third parties to determine the extent of economic damage when firms engage in illegal supply chain practices compared to legally sourced firms. In this way, human rights violations can be litigated through existing law, and the diversity of research available to the public will serve to create a clear path of action for consumers as well as legal entities charged with upholding existing law.

#### **The law is inevitable and contingent *but* dismissing it as an avenue for change removes essential activist tools for mobilization, outreach, and strategizing**

Klare 11 (Karl Klare – Northeastern University School of Law Professor, 1/1/11, “Teaching Local 1330—Reflections on Critical Legal Pedagogy”, <https://repository.library.northeastern.edu/files/neu:332542/fulltext.pdf>, accessed 9/8/18, DL)

I realize that all of this provides precious little comfort to the steelworkers. Nevertheless, the Youngstown struggle left a small, unexpected legacy to legal education, one that enriched my professional life and, I hope, my students‟ learning experience. Subordinated and marginalized people will always need creative legal representation of the kind Staughton provided in the plant shutdown struggles. When my former students rise to the occasion, they “shout Youngstown” all the way into the courtroom. I tweak my classes on Local 1330 to reflect the particular course I happen to be teaching, the length of the class-hour (usually eighty or ninety minutes), and my evolving views. The following description is a composite of my approaches over the years. The core of the session is always the same. I ask the students to imagine themselves as members of Staughton‟s legal team, and I challenge them to devise an alternative, winning legal theory on behalf of the workers and the community. I give my opinion that the plaintiffs‟ common law theories were sound and should have prevailed.4 But I ask the class to accept for purposes of the exercise that Judge Lambros has already ruled against these theories, so that an alternative approach is required. I begin by discussing mass dismissals. Mass dismissals have a variety of causes including natural disaster, but most commonly they occur in connection with economic change and capital mobility. I define “capital mobility” broadly to mean adjustments in the uses to which investors put capital, for example, when an owner decides to disinvest in one enterprise or facility and re-invest the proceeds elsewhere. Capital mobility and mass dismissals are normal side effects of economic change. I cite Bureau of Labor Statistics data to show that mass dismissals occur in the United States with great frequency even when we are not in the midst of a major recession.5 A mass dismissal does not necessarily indicate that the closing business was not viable. Capital might migrate away from a viable business if that use of capital is not as profitable as an alternative investment. An alternative investment may be more profitable for a variety of reasons that do not necessarily reflect badly on the viability or social usefulness of the original investment. An investment might promise a higher return for one potential investor than for another because of other lines in which that particular investor is currently engaged or because of the investor‟s tax posture. Rates of return must also be assessed in light of the amount of risk an investor is prepared to assume. I then discuss U.S. Steel‟s decision to leave Youngstown, the worker and community resistance, the workers‟ attempt to buy the plant, the company‟s refusal to sell on the preposterous basis that a worker-owned entity would enjoy tax subsidies of a kind that routinely benefited U.S. Steel, and finally, the company‟s decision to blow up the plant. I display the iconic photograph of the demolition. I describe some of the social outcomes that occurred in the aftermath of the departure of the steel industry from the Mahoning Valley. The population of Youngstown declined from 115,511 in 1980 to 82,026 by 2000.6 The local economy went on life support. Dramatic increases in family breakdown, mental illness admissions, domestic violence, child abuse, and welfare recipiency occurred.7 The plaintiffs relied on three principal theories to resist the plant closing. One was that U.S. Steel violated the antitrust laws by refusing even to consider selling the plant to a worker-owned entity.8 The District Court rejected this contention.9 To simplify class discussion, I ask the students to put antitrust aside and focus only on common law theories. In that branch of the case, plaintiffs alleged, first, that U.S. Steel breached an express, unilateral contract stipulating that the company would remain in Youngstown if the workers made the plant profitable. Second, plaintiffs pleaded a promissory estoppel theory, namely, that the workers had reasonably relied to their great detriment on U.S. Steel‟s alleged promise to stay in Youngstown if the plant were profitable. Judge Lambros rejected the express contract theory on two grounds: (1) that the person alleged to have made the promise, the local plant manager, lacked authority to bind the company; and (2) that a condition precedent failed because the plant had not in fact been made profitable. The workers insisted that they had, indeed, made the plant profitable through extra work-effort and wage and benefit concessions. However, the court accepted U.S. Steel‟s definition of “profitability,” which cast doubt on the workers‟ more optimistic accounting. The promissory estoppel theory was rejected because, even assuming that the plant manager‟s statements were binding on the company, they were in the nature of a well-intended “pep talk” rather than a promise upon which a reasonable person might rely. The court repeated its finding that the plant had not been made profitable, a point seemingly irrelevant to the promissory estoppel claim. In a stunning development at the pretrial conference, Judge Lambros suggested sua sponte “the possibility [that] the relationships between the steel industry and the surrounding community generat[ed] a property right[,]”10 and he requested argument on the point. His subsequent opinion made a very convincing argument for relief; namely, that U. S. Steel had “draw[n] from the lifeblood of the community for so many years.”11 In substance, Judge Lambros took an unjust enrichment approach, reasoning that because the workers had invested their human capital in the firm and because the community had invested other resources, “United States Steel should not be permitted to leave the Youngstown area devastated[.]”12 However, with heartfelt regret, Judge Lambros eventually rejected the property theory on the ground that “the mechanism to . . . recognize this new property right[ ] is not now in existence in the code of laws of our nation.”13 The District Court‟s key rulings were affirmed by the Sixth Circuit in due course. 14 At this point, I pause to take a straw-poll of the class on whether the common law issues in Local 1330 were correctly decided. Invariably, students immediately ask whether I mean “correctly decided” in a legal sense or in terms of morals and politics. Feigning surprise, I ask the students whether they can still believe after a year or two of law study, indeed, whether they still believed after a week or two of law study, that a bright-line distinction can be drawn between legal considerations and moral/political considerations. Most students are prepared to agree that law and morals/politics are intertwined, but they insist that their question about how I meant for them to cast their votes is meaningful: “You know very well what we are talking about.” I profess that I do not. Conversation ensues about whether there is a boundary between law and morality/politics and if so, what is the nature of the distinction. Eventually, I make a show of offering a big concession and allow the straw poll to proceed in two stages. First, was the case correctly decided in a moral/political sense? And, second, was the case correctly decided in “purely” legal terms? Typically, a majority shares the moral intuition that the result was unjust and that the workers and community deserved some remedy—perhaps damages in the form of a transition package or an order that U.S. Steel enter good faith negotiations with worker and community representatives on sale of the plant to a new worker-owned entity. Invariably, an even larger majority votes that Judge Lambros was legally correct in dismissing the plaintiffs‟ claims. In other words, almost every time I have taught the case, many or even most students are torn between what they think of as a just outcome to the case and what they think the law required. By now it has begun to dawn that one of the subjects of this class session is how lawyers translate their moral intuitions and sense of justice into legal arguments. Most beginning students have found themselves in the situation of wanting to express their moral intuitions in the form of legal arguments but of feeling powerless to do so. A common attitude of Northeastern students is that a lawyer **cannot turn moral and political convictions into legal arguments** in the context of case-litigation. If you are interested in directly pursuing a moral and/or political agenda, at a minimum you need to take up legislative and policy work, and more likely you need to leave the law altogether and take up grass roots organizing instead. I insist that we keep the focus on litigation for this class period. After the straw poll, I ask the students to simulate the role of Staughton Lynd‟s legal assistants and to assume that the court has just definitively rejected the claims based on contract, promissory estoppel, and the notion of a community property right. However, they should also assume, counter-factually, that Judge Lambros stayed dismissal of the suit for ten days to give plaintiffs one last opportunity to come up with a theory. I charge the students with the task of making a convincing common law argument, supported by respectable legal authority, that the plaintiffs were entitled to substantial relief. Put another way, I ask the students to prove that Judge Lambros was mistaken—that he was legally wrong—when he concluded that there was no basis in existing law to vindicate the workers‟ and community‟s rights. In some classroom exercises, I permit students to select the side for which they wish to argue, but I do not allow that in this session. All students are asked to **simulate the role** of plaintiffs‟ counsel and to **make the best arguments they can**—**either because they** actually **believe** **such arguments** **and/or because in their** simulated role they are fulfilling their ethical **duty to provide** zealous **representation**. A recurring, instant reflex is to say: “it‟s simple—the workers‟ human rights were violated in the Youngstown case.” I remind the class that the challenge I set was to come up with a common law theory. The great appeal of human rights discourse for today‟s students is that it seems to provide a technical basis upon which their fervent moral and political commitments appear to be legally required. “What human rights?” I ask. The usual answers are (1) “they had a right to be treated like human beings” or (2) “surely there is some human right on which they can base their case.” To the first argument I respond: “well, how they are entitled to be treated is exactly what the court is called upon in this case to decide. Counsel may not use a re-statement of the conclusion you wish the court to reach as the legal basis supporting that conclusion.” To the second response I reply: “it would be nice if some recognized human right applied, but we are in the Northern District of Ohio in 1980. Can you cite a pertinent human rights instrument?” (Answer: “no.”) The students then throw other ideas on the table. Someone always proposes that U.S. Steel‟s actions toward the community were “unconscionable.” I point out that unconscionability is a defense to contract enforcement whereas the plaintiffs were seeking to enforce a contract (the alleged promise not to close the plant if it were rendered profitable). In any case, we have assumed that the judge has already ruled that there was no contract. Another suggestion is that plaintiffs go for restitution. A restitution claim arises when plaintiff gives or entrusts something of value to the defendant, and the defendant wrongfully refuses to pay for or return it. But here we are assuming that Judge Lambros has already ruled that the workers did not endow U.S. Steel with any property or value other than their labor power for which they were already compensated under the applicable collective bargaining agreements. If the community provided U.S. Steel with value in the nature of tax breaks or infrastructure development, the effect of Judge Lambros‟ ruling on the property claim is to say that these were not investments by the community but no-strings-attached gifts given in the hope of attracting or retaining the company‟s business. At this point I usually give a hint by saying, “if we‟ve ruled out contract claims, and we‟ve ruled property claims, what does that leave?” Aha, torts! A student then usually suggests that U.S. Steel committed the tort of intentional infliction of emotional distress (IIED).15 I point out that, even if it were successful, this theory would provide plaintiffs relief only for their emotional injuries, but not their economic or other losses, and most likely would not provide a basis for an injunction to keep the plant open. In any event, IIED is an intentional tort. What, I ask, is the evidence that U.S. Steel intends the plant shutdown to cause distress? The response that “they should know that emotional distress will result” is usually not good enough to make out an intentional tort. An astute student will point out that in some jurisdictions it is enough to prove that the defendant acted with reckless disregard for the likelihood that severe emotional distress would result. I allow that maybe there‟s something to that, but then shift ground by pointing out that a prima facie requirement of IIED is that the distress suffered go beyond what an “ordinary person” may be expected to endure or beyond the bounds of “civilized behavior.”16 Everyone knows that plants close all the time and that the distress accompanying job-loss is a normal feature of American life. A student halfheartedly throws out negligent infliction of emotional distress, to which my reply is: “In what way is U.S. Steel‟s proposed conduct negligent? The problem we are up against here is precisely that the corporation is acting as a rational profit-maximizer.” A student always proposes that plaintiffs should allege that what U.S. Steel did was “against public policy.” First of all, I say, “public policy” is not a cause of action; it is a backdrop against which conduct or contract terms are assessed. Moreover, what public policy was violated in this case? The student will respond by saying “it is against public policy for U.S. Steel to leave the community devastated.” I point out once again that that is the very conclusion for which we are contending—it is circular argument to assert a statement of our intended conclusion as the rationale for that conclusion. This dialogue continues for awhile. One ineffective theory after another is put on the table. Only once or twice in the decades I have taught this exercise have the students gotten close to a viable legal theory. But this is not wasted time—learning occurs in this phase of the exercise. The point conveyed is that while law and morals/politics are inextricably intertwined, they are not the same. For one thing, lawyers have a distinct way of talking about and analyzing problems that is characteristic of the legal culture of a given time and place. So-called “legal reasoning” is actually a repertoire of conventional, culturally approved rhetorical moves and counter-moves deployed by lawyers to create an appearance of the legal necessity of the results for which they contend. In addition, good lawyers actually possess **useful**, specialized **knowledge** not generally absorbed by political theorists or movement activists. Legal training **sensitizes us** to the many **complexities** that arise whenever general norms and principles are implemented in the form of rules of decision or case applications. Lawyers know, for example, that large stakes may turn on precisely how a right is defined, **who has standing** to vindicate it, **what remedies it provides, how the right is** enforced and in what venue(s), and so on. **We are not doing our jobs** properly **if we argue,** simply, “**what the defendant did was unjust and the plaintiff deserves relief**.” No one needs a lawyer to make the “what the defendant did was unjust” argument. As Lynd‟s account shows, the workers of Youngstown did make that argument in their own, eloquent words and through their collective resistance to the shut-downs. If “what the defendant did was unjust” is all we have to offer, **lawyers bring no added value** to the table.Progressive students sometimes tell themselves that law is basically gobbledygook, but that you can assist movements for social change if you learn how to spout the right gobbledygook. In this view of legal practice, “creativity” consists in identifying an appropriate technicality that helps your client. But in the Youngstown situation, we are way past that naïve view. There is no “technicality” that can win the case. In this setting, a social justice lawyer must use the bits and pieces lying around to generate new legal knowledge and new legal theories. And these new theories must say something more than “**my client deserves to win**” (although it is fine to commence one‟s research on the basis of that moral intuition). The class is beginning to get frustrated, and around now someone says “well, what do you expect? This is capitalism. There‟s no way the workers were going to win.” The “this-is-capitalism” (“TIC”) statement sometimes comes from the right, sometimes from the left, and usually from both ends of the spectrum but in different ways. The TIC statement precipitates another teachable moment. I begin by saying that we need to tease out exactly what the student means by TIC, as several interpretations are possible. For example, TIC might be a prediction of what contemporary courts are most likely to do. That is, TIC might be equivalent to saying that “it doesn‟t matter what theory you come up with; 999 US judges out of 1,000 would rule for U. S. Steel.”17 I allow that this is probably true, but not very revealing. The workers knew what the odds were before they launched the case. Even if doomed to fail, a legal case may **still make a contribution to social justice** if the litigation creates a focal point **of energy around which a community can mobilize, articulate moral and political claims, educate the wider public, and conduct political consciousness-raising**. And if there is political value in pursuing a case, we might as well make good legal arguments. On an alternative reading, the TIC observation is more ambitious than a mere prediction. It might be a claim that a capitalist society requires a legal structure of a certain kind, and that therefore professionally acceptable legal reasoning within capitalist legal regimes cannot produce a theory that interrogates the status quo beyond a certain point. Put another way, some outcomes are so foreign to the bedrock assumptions of private ownership that they cannot be reached by respectable legal reasoning. A good example of an outcome that is incompatible with capitalism, so the argument goes, is a court order interfering with U.S. Steel‟s decision to leave Youngstown. This reading of the TIC comment embodies the idea that legal discourse is encased within a deeper, extra-legal structure given by requirements of the social order (capitalism), so that within professionally responsible legal argument the best lawyers in the world could not state a winning theory in Local 1330. Ironically, **the left and the right in the class often share this belief.** I take both conservative and progressive students on about this. I insist that the claim that our law is constrained by a rigid meta-logic of capitalism—which curiously parallels the notion that legal outcomes are tightly constrained by legal reasoning—is just plain wrong. Capitalist societies recognize all sorts of limitations on the rights of property owners. Professor Singer‟s classic article catalogues a multitude of them.18 The claim is not only false, it is a dangerous falsehood. To believe TIC in this sense is to limit in advance our aspirations for what social justice lawyering can accomplish. Now the class begins to sense that I am not just playing law professor and asking rhetorical questions to which there are no answers. The students realize that I actually think that I have a theory up my sleeve that shows that Judge Lambros was wrong on the law. If things are going well, the students begin to feel an emotional stake in the exercise. Many who voted in the straw poll that the plaintiffs deserved to win are anxious to see whether I can pull it off. Other students probably engage emotionally for a different reason—the ones who have been skeptical or derisive of my approach all term hope that my “theory,” when I eventually reveal it, is so implausible that I will fall flat on my face. I begin to feed the students more hints. One year I gave the hint, “What do straying livestock, leaking reservoirs, dynamite blasting, and unsafe products have in common?”—but that made it too easy. Usually my hints are more oblique, as in “does anything you learned about accident law ring a bell?” Whatever the form, the students take the hints, and some start cooking with gas. Over the next few minutes, the pieces usually fall into place. The legal theory toward which I have been steering the students is that U.S. Steel is strictly liable in tort for the negative social effects of its decision to disinvest in Youngstown. I contend that that is what the law provided in Ohio in 1980, and therefore a mechanism was available for the District Court to order substantial relief. A basic, albeit contested theme of modern tort law, which all students learn in first year, is that society allows numerous risky and predictably harmful activities to proceed because we deem those activities, on balance, to be worthwhile or necessary. In such cases, the law often imposes liability rules designed to make the activity pay for the injuries or accidents it inevitably causes. For more than a century, tort rules have been fashioned to force actors to take account of all consequences proximately attributable to their actions, so that they will internalize the relevant costs and price their products accordingly. The expectation is that in the ordinary course of business planning, the actor will perform a cost/benefit analysis to make sure that the positive values generated by the activity justify its costs. Here, I remind the students of the famous Learned Hand Carroll Towing formula19 comparing B vs. PL, where B represents the costs of accident avoidance (or of refraining from the activity when avoidance is impossible or too costly); and P x L (probability of the harm multiplied by the gravity of the harm) reflects foreseeable accident costs.20 The tort theory that evolved from this and similar cost/benefit approaches is called “market deterrence.” The notion is that liability rules should be designed to induce the actor who is in the best position to conduct this kind of cost/benefit analysis with respect to a given activity to actually conduct it. Such actors will have incentives to make their products and activities safer and/or to develop safer substitute products and activities.21 Actors will then pass each activity‟s residual accident costs on to consumers by “fractionating” and “spreading” such costs through their pricing decisions. As a result, prices will give consumers an accurate picture of the true social costs of the activity, including its accident costs. Consumers are thus enabled to make rational decisions about whether to continue purchasing the product or activity in light of its accident as well as its production costs. In principle, if a particular actor produces an unduly risky product (in the sense that its accident costs are above “market level”), that actor‟s products will be priced above market, and he/she will be driven out of business.22 Tort rules have long been crafted with an eye toward compelling risky but socially valuable activities or enterprises to internalize their external costs. My examples—to which the students were exposed in first year—are the ancient rule imposing strict liability for crop damage caused by escaping livestock;23 strict liability under the doctrine of Rylands v. Fletcher for the escape of dangerous things brought onto one‟s property;24 strict liability under Restatement (Second) § 519 for damage caused by “abnormally dangerous activities” such as dynamite blasting;25 and most recently, strict products liability.26 Of course, there are many exceptions to this approach. For example, “unavoidably unsafe” or “Comment k products” are deemed non-defective and therefore do not carry strict liability. And of course the U.S. largely rejected Rylands. Why was that? Because, as was memorably stated in Losee v. Buchanan: “We must have factories, machinery, dams, canals and railroads. They are demanded by the manifold wants of mankind, and lay at the basis of all our civilization.”27 In assuming that entrepreneurial capitalism would be stymied if enterprises were obliged to pay for the harms they cause, the Losee court accepted a strong version of TIC. Time permitting, I touch briefly on the debate about whether the flourishing of the negligence principle in the U.S. subsidized 19th century entrepreneurial capitalism,28 the possible implications of the Coase Theorem for our discussion of Local 1330,29 and the debate about whether it is appropriate for courts to fashion common law rules with an eye toward their distributive as well as efficiency consequences.30 With this as background, I argue that the District Court should have treated capital mobility—investors‟ circulation of capital in search of the highest rate of return—as a risky but socially valuable activity warranting the same legal treatment as straying cattle and dynamite blasting. Capital mobility is socially valuable. It is indispensable for economic growth and flexibility. Capital mobility generates important positive externalities for “winners,” such as economic development and job-creation at the new site of investment. However, capital mobility also predictably causes negative external effects on “bystanders” (the ones economists quaintly label “the losers”). We discussed some of these externalities at the outset of the class—the trauma associated with income interruption and pre-mature retirement, waste or destruction of human capital, multiplier effects on the local economy, and social pathologies and community decline of the kind experienced in Youngstown. The plaintiffs should have argued that capital mobility must internalize its social dislocation costs for reasons of economic efficiency, and that this can be accomplished by making investors strictly liable in tort for the social dislocation costs proximately caused by their capital mobility decisions. An investor considering shifting capital from one use to another will compare their respective rates of return. In theory, the investment with the higher return is socially optimal (as well as more profitable for the individual investor). The higher-return investment enlarges the proverbial pie. But investors must perform accurate comparisons of competing investment opportunities in order for the magic hand of the market to perform its magic. A rational investor bases her analysis primarily on price signals reflecting estimated rates of return on alternative investment options. This comparison will yield an irrational judgment leading to a socially suboptimal investment decision unless the estimated rate of return on the new investment reflects its external effects, both positive and negative. Investors often have public-relations incentives to tout the positive economic consequences promised at the new location. To guarantee rational decision making, the law must force investors contemplating withdrawal of capital from an enterprise to also carefully consider the negative social dislocation costs properly attributable to the activity of disinvestment. This can be achieved by making capital mobility strictly liable for its proximately caused social dislocation costs.31 This approach erects no inefficient barriers to capital mobility, nor does it bar all disinvestment decisions that may cause disruption and loss in the exit community. Other things being equal, if the new investment discounted by the social dislocation costs of exit will generate a higher rate of return than the current use of the capital, the capital should be disinvested from the old use and transferred to the new use. However, if investors are not forced by liability rules to take into account the social dislocation costs of disinvestment, the new investment opportunity will appear more attractive than it really is in a social sense. The situation involves a classic form of market failure. The market is imperfect because investors are not obliged to take into account the negative social dislocation costs proximately caused by their decisions. Inaccurate price signals lead to the overproduction of capital movement and therefore to a suboptimal allocation of resources. Apart from any severance and unemployment benefits received by workers at the old plant, the social dislocation costs of disinvestment are almost entirely externalized onto the workers and the surrounding community. Strict tort liability will induce investors and their downstream customers to fractionate and spread the dislocation costs of capital mobility when pricing the products of the new activity. This will provide those who use or benefit from the new activity at the destination community more accurate signals as to its true social costs and oblige them to fractionally share in the misfortunes afflicting the departure community. Suppose, for example, that U.S. Steel invested the money it took out of Youngstown toward construction of a modern, high-tech steel mill in a Sunbelt state. The price of steel produced at the new mill should fractionally reflect social dislocation costs in Youngstown. According to legal “common sense” and mainstream economic theory, the movement of capital from a lesser to a more profitable investment is an unambiguous social good. Allowing capital to migrate to its highest rate of return guarantees that society‟s resources are devoted to their most productive uses. Society as a whole is better off if capital is permitted freely to migrate to the new investment and there to grow the pie. In short, the free mobility of capital maximizes aggregate welfare. We are all “winners” in the long run, even if some unfortunate “losers” might get hurt along the way. It follows as an article of faith that any legal inhibition on the mobility of capital is inefficient and socially wasteful. This is why mainstream legal thinking refuses to accord long-term workers or surrounding communities any sort of “property interest” in the enterprise which a departing investor is obliged to buy out before removal.32 An unwritten, bed-rock assumption of US law is that capital is not and should not be legally responsible for the social dislocation costs occasioned by its mobility.33 Such costs are mostly externalized onto employees and the surrounding community, even if the exit community had subsidized the old investment with tax breaks and similar forms of corporate welfare. The legal common sense about capital mobility is mistaken. It is not a priori true that the movement of capital toward the greatest rate of return unambiguously enhances aggregate social welfare. Free capital mobility maximizes aggregate welfare and allocates resources to their most productive uses only in a perfect market; that is, only in the absence of market failure. The claim that free capital mobility is efficient is sometimes true, and sometimes it is not. It all depends on the particular facts and circumstances on the ground. Voilà. Judge Lambros was wrong. In 1980, a mechanism did exist in our law to recognize the plaintiffs‟ claims and afford them substantial relief for economic, emotional, and other losses.34 All that was required was a logical extension of familiar torts thinking. Had Judge Lambros correctly applied well-known and time-honored torts principles, he would have treated the social dislocation costs of the plant closure as an externality that must be embedded in U.S. Steel‟s calculations regarding the relative profitability of the old and new uses to which it might put its capital. This would close the gap between private and social costs, thereby tending to perfect the market. Notice an important rhetorical advantage of this theory—its core value is economic efficiency. The plaintiffs can get this far along in their argument without mentioning “fairness,” “equity,” or “justice,” let alone “human rights,” values that are often fatal to legal argument in U.S. courts today.35 I now brace myself for the “you gotta be kidding me” phase of the discussion. Objections cascade in. The progressive students want to be convinced that this is really happening. The mainstream students want to poke holes and debunk. A few of them are grateful at last for an opportunity to show how misguided they always knew my teaching was. Always, students assert that my summary discussion of the cost/benefit analysis omitted various costs and benefits. For example, one year I omitted to say that the social dislocation costs in the exit community must be discounted by ameliorative public expenditures such as unemployment insurance benefits. My response to this type of objection is always the same: “you are absolutely right, that cost or benefit should be included in the analysis. And here are a few more considerations we would need to address to perfect the cost/benefit analysis which I left out only in the interest of time.” But I learn from this discussion; not infrequently, students contribute something I had not previously considered. A frequent objection is that the task of quantifying the social dislocation costs associated with capital mobility is just too complicated and difficult. I concede that it is a complex task and that conservative estimates might be required in place of absolute precision. I ask, however, whether it is preferable to allow investors to proceed on the basis of price-signals we know to be wrong or to induce them to use best efforts to arrive at fair estimates. Separation of powers always comes up, as it should. I go through the usual riffs. Yes, I concede, these problems cry out for a comprehensive legislative solution rather than case-by-case adjudication. But standard, well-known counter-arguments suggest that Judge Lambros should nevertheless have imposed tort liability in this case. For one thing, determining the rules of tort liability has always been within the province of courts. Deferring to the status quo (that those who move capital are not legally responsible for negative externalities) is every bit as much a choice, every bit as much “activism” or “social engineering,” as altering the status quo. Legal history is filled with cases in which the legislature was only prompted to address an important public policy concern by the shock value of a court decision. Particularly is this so in cases involving the rights and interests of marginalized, insular, and under-represented groups like aging industrial workers. I note that Congress eventually responded to the plant closing problem with the WARN Act, a modest but not unimportant effort to internalize to enterprises some of the social dislocation costs of capital disinvestment. The statute liquidates these costs into a sum equal to sixty days‟ pay after an employer orders a plant closing or mass layoff without giving proper notice.36 I call the students‟ attention to the provision of WARN barring federal courts from enjoining plant closings37 and ask why Congress might have included that restriction. Another common objection concerns causation. A student will say: “The closedown of the mills, let alone the shutdown of any particular plant, could not have caused all of the suicides, heart failures, domestic violence, and so on, in Youngstown. Surely many such tragedies would have occurred anyway, even if U.S. Steel had remained. It isn‟t fair to impose liability on U.S. Steel for everything bad that happened in Youngstown during the statute-of-limitations period.” I immediately say that this is a terrific point, and that I was hoping someone would raise it. I compliment the student by saying that the question shows that he/she is now tapping legal knowledge. Typically, the class is concerned with causation-in-fact or “but for” causation. Their question is, how do we know that a plant shutdown caused any particular case of heart failure or suicide in Youngstown? Problems of causal uncertainty are a familiar issue, and I remind students that they were exposed to several well-known responses in Torts. A time-honored, if simplistic device is to shift the burden of proof regarding causationinfact to the defendant, when everyone knows full well that the defendant has no more information than the plaintiff with which to resolve the problem of causal uncertainty.38 In recent decades, courts have developed more sophisticated responses to problems of causal uncertainty as, for example, in the DES cases. As the court stated in Sindell:39 In our contemporary complex industrialized society, advances in science and technology create fungible goods which may harm consumers and which cannot be traced to any specific producer. The response of the courts can be either to adhere rigidly to prior doctrine, denying recovery to those injured by such products, or to fashion remedies to meet these changing needs. Just as Justice Traynor in his landmark concurring opinion in Escola . . . recognized that in an era of mass production and complex marketing methods the traditional standard of negligence was insufficient to govern the obligations of manufacturer to consumer, so should we acknowledge that some adaptation of the rules of causation and liability may be appropriate in these recurring circumstances . . . .40 At this point, some of the progressive students are beginning to salivate. They came to law school with the hope that legal reasoning would provide them a highly refined and politically neutral technology for speaking truth to power. The first semester disabuses most of them of that crazy idea. They have learned that they will not find certainty or answers in legal discourse, and that legal texts are minefields of gaps, conflicts, and ambiguities with moral and political implications. I can tell from the glint in their eyes that they are beginning to ask themselves whether this economics stuff, which they formerly shunned like the plague, might provide a substitute toolbox of neutral technologies with which to demonstrate that redress for workers and other subordinated and marginalized groups is legally required. I cannot allow them to think that. Therefore, unless an alert student has spotted it, I now reveal my Achilles‟ heel. The weak link in my argument is the age-old question of proximate causation. Assume we solve the causation-in-fact problem. For example, assume that by analogy to the Sindell theory of market-share liability, the court arrives at a fair method of attributing to the plant shutdown some portion of the social trauma and injuries occurring in the wake of U.S. Steel‟s departure from Youngstown. How do we know whether the plant closing proximately caused these harms? What do we mean by “proximate causation” anyway, and why does it matter? These questions present another exciting, teachable moment. Naturally, the students haven‟t thought about proximate cause since first year. They barely remember what it is and how it differs from causation-in-fact. Some 3Ls shuffle uncomfortably knowing that the Bar examination looms, and they are soon going to need to know about this. I provide a quick review of proximate causation which addresses the question, how far down the chain of causation should liability reach? I illustrate my points by referring to Palsgraf v. Long Island R.R,41 which all law students remember. Perhaps U.S. Steel might fairly be held accountable for the suicide of steelworkers within ninety days of the plant closing, but we might draw the line before holding U.S. Steel liable for a stroke suffered by a steelworker‟s spouse five years later. Now keyed in to what proximate cause doctrine is about, the students eagerly wait for me to tell them what the “answer” is, that is, where proximate causation doctrine would draw the line in the Youngstown case. That‟s when I give them the bad news. I explain that proximate causation doctrine does not provide a determinate analytical method for measuring the scope of liability. We pretend that buzzwords like “reasonable foreseeability” or “scope-of-the-risk” give us answers, but ultimately decisions made under the rubric of proximate causation are always value judgments.42 The conclusion that “X proximately caused Y” is a statement about the type of society we want to live in. At this juncture, the 3Ls grumpily realize that I am not going to be much help in preparing them for their bar review course. I now distribute a one-page hand-out on proximate causation prepared in advance. The handout reprints Justice Andrews‟ remarkable observation in his Palsgraf dissent: What we . . . mean by the word „proximate‟ is, that because of convenience, of public policy, of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point. This is not logic. It is practical politics . . . . It is all a question of expediency. There are no fixed rules to govern our judgment. There are simply matters of which we may take account.43 I point out that causation-in-fact analysis, too, always involves perspective and value judgments.44 Why assume that water escaping the reservoir diminished the value of the neighboring coal mining company‟s land? Why not assume that the coal company‟s decision to dig close to the border diminished the value of the manufacturer‟s land (by increasing the cost of using the type of reservoir needed in its production process)? For that matter, why assume that the cattle trample on the neighbors‟ crops? Why not assume that the crops get in the way of the cattle? My handout also contains my variation on Robert Keeton‟s famous definition of proximate cause45: When a court states that „the defendant‟s conduct was the proximate cause of (some portion of) the plaintiff‟s injuries,‟ what the court means is that (1) the defendant‟s conduct was a cause-in-fact of that portion of plaintiff‟s injuries; and (2) the defendant‟s conduct and the plaintiff‟s specified injuries are so related that it is appropriate, from the moral and social-policy points of view, to hold the defendant legally responsible for that portion of the plaintiff‟s injuries. What we mean when we ask whether the social dislocation costs associated with the shutdown of the steel plant were proximately caused by capital mobility is whether these costs are, in whole or in part, properly attributable from a moral/political point of view to U.S. Steel‟s decision to disinvest. Economic “science” does not and cannot establish in a value-neutral manner that the social dislocation costs of the plant shutdown are a negative externality of capital mobility. A conclusion of that kind requires a value judgment that we disguise under the rubric of “proximate causation,” a value judgment about whom it is appropriate to ask to bear what costs related to what injuries. The lesson is that in legal reasoning **there is no escape** **from moral and political choice**. If things have gone according to plan, time conveniently runs out, and the class is dismissed on that note. What am I trying to accomplish in a class like this? What are the objectives of critical legal pedagogy? Legal education should **empower students**. It should put them in touch with their owncapacity to take control over their lives and professional education and development. It should enable them to experience the possibility of participating, **as lawyers,** **in transformative social movements**. But all too often classroom legal education is deadening. The law student‟s job, mastering doctrine, appears utterly unconnected to any process of learning about oneself or developing one‟s moral, political, or professional identity. Classroom legal education tends to reinforce **a sense of powerlessness** about our capacity to change social institutions. Indeed, it often induces students to feel that they are powerless to shape and alter their own legal education. Much of legal education induces in students a pervasive and exaggerated **sense of the constraint of legal rules** and roles and the students‟ inability to do much about it. In capsule form, the goals of critical legal pedagogy are— • **to disrupt the socialization process** that occurs during legal education; • **to unfreeze entrenched habits** of mind and deconstructthe false claims of necessity which constitute so-called “legal reasoning”; • to urge students to see their life‟s work ahead as an opportunity to unearth and challenge law‟s dominant ideas about society, justice, and human possibility and to infuse **legal rules and practices** **with** emancipatory and egalitarian content; • to persuade students that legal discourses and practices comprise a **medium**, **neither infinitely plastic nor inalterably rigid**, in which they can pursue moral and political projects and **articulate alternative visions of social organization and social justice**; • to **train them to argue** professionally and respectably **for the utopian and the impossible**; • to alert them that legal cases potentially provide a forum for **intense public consciousness-raising** **about** issues of **social justice**; • to encourage them to view legal representation as an opportunity to challenge, push, and relocate the boundaries between intra-systemic and extra-systemic activity, that is, an opportunity **to work within the system** in a way that reconstitutes it; and • to show that the existing social order is **not immutable** but “is merely possible, and that people have the freedom and power to act upon it.”46 The most important point of the class is that social justice lawyers never give up**.** **The appropriate response** **when you think you have a hopeless case** **is to go back and do more work in the legal medium**.

# 2AC --- Rutgers RR R2

## 2AC --- Case

## 2AC --- New aff’s

## 2AC --- K

### 2AC --- Link

#### Refuse ontology frames – Black isn’t coterminous with Slave but is an agent of a shared history of humanity – ceding democratic ideals to slavers is inaccurate, racially paternalistic, and zeroes pragmatic harms reduction

McCarthy 20 (Jesse McCarthy is an assistant professor in the departments of English and of African and African American Studies at Harvard University. “On Afropessimism.” <https://lareviewofbooks.org/article/on-afropessimism/> //shree)

Nonetheless, the fact that the main current of Afropessimist thinking runs counter to all of Black political history and tradition thus far; the fact that the foundational thinker for this perspective, Frantz Fanon, came to completely opposing conclusions with respect to the nature of politics and solidarity in struggle; the fact that the theory often appears to evade scrutiny or contestation by proclaiming itself “meta-theoretical” and “ontological”; the fact that it asserts a “mandate” for which no empirical evidence is provided and in the face of overwhelming evidence that it constitutes at best a minoritarian and class-specific position — all of this has to be reckoned with by those who want to take Afropessimism to heart. Perhaps it’s worth reminding ourselves that when he was murdered, Fred Hampton was encouraging poor whites to analogize their position to that of poor Blacks. At the time of his assassination, Malcolm X was embracing and actively seeking to incorporate a cross-racial coalition into his new organization. Ella Baker actively encouraged the deepening of organizational ties and activist links across different communities by emphasizing common struggle and common oppression. What evidence do we have, on the other hand, that the power behind the status quo is quaking at the thought of Black folk gathering in isolation to mourn the end of the world? If the challenge is more narrowly intellectual and what is needed are correctives to white Marxist hubris, Cedric Robinson’s Black Marxism (1983) already exists. Black feminist thought offers its own counternarratives. Of course, Wilderson doesn’t have to agree with Robinson or the Combahee River Collective. But isn’t it a problem that they aren’t cited even once in his books? Are we to jettison our entire tradition? Were all those who came before us so hopelessly naïve? Are we going to cast aside Vincent Harding’s There Is a River and read nothing but Fanon, Lacan, and Heidegger? Is Bantu philosophy overdetermined by social death even if its worldview was constructed in the absence of the white gaze? Afropessimism has yet to tackle these questions, to take its opponent’s counterarguments and positions seriously. David Marriott, who is cited by Wilderson as a fellow Afropessimist, asks in his own work: whither Fanon? I wonder this, too. Wilderson says he is the figure he modeled himself on as a young man. Clearly Fanon is central to all of his thinking; indeed, all Afropessimist theorists consider Black Skin, White Masks (1952) a cornerstone text. It is an extraordinary philosophical work, and they are right that it is too often underappreciated. But it is also an extremely complicated intellectual experiment. The third sentence of that book is: “I’m not the bearer of absolute truths.” Fanon proposes to work through the problem of the abjection of Blackness, and that process extends beyond the book into the engaged existentialist revolt and the analysis of colonial relations that he explicitly argues involves the colonized subject, regardless of their race, in The Wretched of the Earth (1961). But even if one were to read only Black Skin, White Masks, it is impossible to miss the humanist assumptions that it opens onto in its conclusion. What else can one make of Fanon stating that “I am not a slave to slavery that dehumanized my ancestors,” and that “the density of History determines none of my acts. I am my own foundation”? How can one miss the assumption of a shareable humanity when he insists that “at the end of this book we would like the reader to feel with us the open dimension of every consciousness.” How can Fanon’s trajectory into the Algerian War of Independence be reconciled with the null trajectories that Afropessimism proposes? If Afropessimism pushes us to pose harder and sharper questions as Fanon prayed his Black body always would, if it serves to break the shallow cant of the media class and its operatives — then certainly it will have done some good. But on the terms of its own presiding genius it needs to be understood as a waystation and not a terminus on the road to disalienation that Fanon argued is the only path to freedom for Black people in the modern world. That path, which he described in terms of building a “new man,” required him to first understand the depth of abjection that Blackness had been cast into, and then to undo that abjection by mobilizing its ejection from the political order of the West in a grand historical struggle to reconstruct that civilization from the side of the oppressed, an embrace that clearly involves a radical solidarity with non-Black people. This was the mission Fanon was on when he died, and it was a mission he believed Black peoples would have a special, indeed, foundational role in ultimately seeing through. Realizing these goals does not mean adhering to a formulaic principle or that Black people need to think, act, or speak as a monolith. Fanon and Wilderson are both fond of citing Aimé Césaire’s phrase about “the end of the world” from his poem Notebook of a Return to the Native Land: One must begin somewhere. Begin what? The only thing in the world worth beginning: The End of the world of course. These lines do not appear at the end of the poem, however, but roughly halfway through it. The interjection, “of course,” stands in here for the French word “parbleu,” which, even in the late 1930s when Césaire was composing his poem in Paris, carried a folksy and bathetic ring that is only dimly captured in the English but is easier to hear if you imagine these lines as having strayed from a play by Samuel Beckett. Wilderson intones this phrase repeatedly in his book, wielding it like a totemic hammer portending world-destroying events that, in light of the commitments of his own theory, seem to suggest, and possibly wish for, a zero-sum war between the races. But Césaire’s usage is far more ambivalent and ironic, the cry of a man whose revolutionary action must first and foremost be directed inwardly toward a poetic reconstruction of the self, a liberation that requires a self-determined and self-realizing pursuit of truth. Fanon admired and respected no other intellectual more than Césaire. We know from his letters to his French publisher François Maspero that he imagined his writings as adressed, in no small part, to and for him. The idiosyncratic prose style of Black Skin, White Masks is Fanon’s way of signifying upon a correspondence with Césaire’s poetics. Both writers are acutely aware that the Black thinker is poised precariously between the poles of reflection and action. But both are committed to a humanistic pursuit of truth and both believe in the promise of a radiant Blackness whose time is not yet come. This is why, even as the Algerian War raged around him, Fanon continued his psychiatric research, convinced that understanding the traumas of war and torture would be necessary for healing the postrevolutionary body politic. He wrote for the present and for the future in pursuit of an understanding of himself and of human nature, and for the cause of a political independence and freedom that he hoped would set the entire African continent on a new course. Had he lived, he would have persevered until every colonialist regime from Algiers to Cape Town (the title he had in mind for his last book was Alger-Le Cap) had been driven off the continent. Fanon was no pessimist: true revolutionaries never are. ¤ But must we revolve around Fanon in the first place? Today many activists are more inspired by Fannie Lou Hamer. The US context has its own problems that Fanon only barely understood and addressed. Why not return instead, in this hour of national contestation, to a figure like David Walker and his Appeal to the Coloured Citizens of the World; But in Particular and Very Expressly to those of the United States of America from 1829? We still underappreciate the importance of this text, one of the seminal documents that captures the first great Black intellectual debate in the United States, which was an argument over whether or not we ought to stay in the country at all. Walker believed we should, and he was the first to define and defend the monumental implications of that choice. He attacked the mighty lobby of the American Colonization Society, which included the powerful senator Henry Clay, Abraham Lincoln, and many leading Black intellectuals of the day, who were convinced full equality for Blacks in America was neither possible nor desirable and advocated emigration. Their plans revolved around evacuating the Black population to the Pepper Coast, now the country of Liberia, which emerged from colonial schemes like “Mississippi-in-Africa” that the American Colonization Society founded in the 1830s. We could have abandoned the country. History could have taken a very different course. American slaves could have returned to Africa and the United States could have become a white ethno-state, a second Europe. The 1820s and ’30s were the last possible moment of undoing or preventing the existence of a Black America. But Black American intellectuals made the choice to stay — to hold this ground and make something new here that the world had never seen. As the political scientist Melvin Rogers points out, Walker’s Appeal not only staked this argument in terms of a principled Black nationalist claim based on the enormous sacrifice of “blood and tears” in slavery; the rhetorical address of the text was also intended to awaken Black Americans to their own potential as a nationally self-consciously political community with a global outlook. “[F]or [Walker],” Rogers writes, “African Americans did not need a prophet to whom they should blindly defer. Rather they needed a community willing to confront practices of domination, capable of responding to their grievances, and susceptible to transcending America’s narrow ethical and political horizon.” Wilderson’s Afropessimism insists that we are still slaves. Walker insisted in 1829 that the slaves are (and were even then) “colored citizens” of the United States and of the world. That if we are oppressed it is only because we are ignorant of our true strength, because we have been taught to disbelieve and disavow our worth to the world, to the nation, and to each other. Which of these two views is the correct one? I think the historical record and the present state of our politics tells us all we need to know on that score. For it is no coincidence that today it is Black Americans who are once again trying to save the country, to invest in finishing the work of making this place a home that we can live in. In what is a long-standing pattern, the “coloured citizens” of this country are at the forefront of practicing civics. Indeed, what could be more republican than risking one’s health to restore the health of the body politic? To ensure that one of the most basic promises of the state is properly fulfilled: that it apply its law enforcement equally, humanely, and in a manner accountable to the people it serves. As in past struggles, our principled defense of an ethical civil code has attracted others with its moral force. We have seen a massive response, including from sources traditionally opposed to these concerns, who recognize the profoundly dysfunctional culture of US policing, prisons, and courts. Even many of those who do not agree that these are the result of actively racist policies and attitudes no longer deny that our exceptionally poor record cannot plausibly be unrelated to a long history of antiblack violence and antagonism. For this same reason, likeminded people around the world are hoping for a decisive break with the past‚ taking to the streets across the globe to demand that state actors acknowledge that there really is a history of injury that needs to stop being denied, and that we can and should work together to design a new social contract that will restore the perceived legitimacy of law enforcement and criminal justice in the eyes of all citizens and not just some. The generation undertaking these endeavors does not seem to require a narrative of optimism in order to take the great risks they have incurred. They have a healthy indifference to both optimism and pessimism alike. Perhaps it results from the demands of carrying out politics in the real world. The incredibly difficult task of organizing and strategizing in order to elevate and amplify the best responses and to rein in and temper the counterproductive ones that delay and diminish a good cause. That’s hard to do in the best of cases: in a turbulent, paranoid, and instantly videotaped public sphere, it’s a Sisyphean task that bad-faith commentators take advantage of. None of this diminishes the fundamental need for greater self-capacity of the kind Walker called for 200 years ago. Much of the work ahead will necessarily involve a growing capacity for self-reflection, self-criticism, irony, and joy in our politics. It will require acknowledging that struggles against white oppression will never be successful without deepened self-healing in our communities: repairing the relations in families, between men and women; ending the violence directed at trans, queer, and otherwise non-conforming people in our neighborhoods; ending the heinous blood feuds between rival gangs and sets; restoring education and communal trust as our highest priorities and most cherished aspirations. These will always remain preconditional to the realization of freedom and autonomy. It is pursuing these aims as an ongoing collective activity that will make unavoidable the realization as Walker said, that this country is “more ours” than anyone else’s — that we are a historic people with a world-historical destiny that understands our suffering as endowing us with both the right and the responsibility of civilizing the United States in such a way that it reflects the values that our historical experiences bring to it, the freedoms, equalities, and cultural pluralisms that we have made vital and central to its identity. One doesn’t need to hang on desperately to a mirage of hope. If we look to history, we can see more than enough concrete evidence and example to support the conclusion that a racially defined caste system is unlikely to ever again prevail. Of course, that doesn’t mean history is a smoothly upward-trending curve. We have known terrible setbacks. Yes, the violent defeat of Reconstruction was successful. But the building of Black institutions and the Niagara Movement proceeded anyway. Tulsa was burned to the ground. But its Black citizens turned right around and rebuilt it out of the ashes. The Civil Rights movement was checked by the forces of reaction and the assassin’s bullet; but the world of unquestioned white superiority and authority that George Wallace hoped to preserve is reduced now to a twinkle in David Duke’s blue eye. Yes, creepy white supremacists still crawl out from under mossy stones at opportune moments to wail about their Nordic fantasies in their over-sized khaki pants. Yes, like the militants of the Islamic State, they are capable of carrying out horrific acts of terror and violence. But like that barbaric and fanatical sect, white supremacy is permanently confined to such rear-guard actions because it has already lost — it is trying to reverse a clock going forward — which explains the virulence and incoherence of its outbursts of spastic violence. We are not at the end, but near the beginning of something new. The pandemic and the multiple underlying crises and fractures it has revealed make vivid that one need not wait so very long for “the end of the world.” The problem, as generations of millenarians have discovered, is that it turns out there’s a morning after the end of the world. And one after that too. The hardest truth is that all the uncertainties that govern the question of what can be done, what will be done, and the difference between the two, remain in our hands. What would Frantz Fanon, or David Walker, or Ella Baker tell us if they saw the streets today? Surely, not that we are at an impasse against an implacable enemy. They would insist that we lift each other and rise together with the spirit of history at our backs. We have done it before. Every time we do it’s a new day.

#### Neurological, racial bias is flexible and determined by coalitional habit forming in the brain---orienting groups around institutional change best breaks down bias. This is offense because their theory rejects these solutions.

Mina Cikara and Jay Van Bavel 15. \*Mina Cikara is an Assistant Professor of Psychology and Director of the Intergroup Neuroscience Lab at Harvard University. Her research examines the conditions under which groups and individuals are denied social value, agency, and empathy. \*Jay Van Bavel is an Assistant Professor of Psychology and Director of the Social Perception and Evaluation Laboratory at New York University. “The Flexibility of Racial Bias” Scientific American. 6-2-15. <https://www.scientificamerican.com/article/the-flexibility-of-racial-bias/>

It would be easy to see in all this powerful evidence that racism is a permanent fixture in America’s social fabric and even, perhaps, an inevitable aspect of human nature. Indeed, the mere act of labeling others according to their age, gender, or race is a reflexive habit of the human mind. Social categories, like race, impact our thinking quickly, often outside of our awareness. Extensive research has found that these implicit racial biases—negative thoughts and feelings about people from other races—are automatic, pervasive, and difficult to suppress. Neuroscientists have also explored racial prejudice by exposing people to images of faces while scanning their brains in fMRI machines. Early studies found that when people viewed faces of another race, the amount of activity in the amygdala—a small brain structure associated with experiencing emotions, including fear—was associated with individual differences on implicit measures of racial bias. This work has led many to conclude that racial biases might be part of a primitive—and possibly hard-wired—neural fear response to racial out-groups. There is little question that categories such as race, gender, and age play a major role in shaping the biases and stereotypes that people bring to bear in their judgments of others. However, research has shown that how people categorize themselves may be just as fundamental to understanding prejudice as how they categorize others. When people categorize themselves as part of a group, their self-concept shifts from the individual (“I”) to the collective level (“us”). People form groups rapidly and favor members of their own group even when groups are formed on arbitrary grounds, such as the simple flip of a coin. These findings highlight the remarkable ease with which humans form coalitions. Recent research confirms that coalition-based preferences trump race-based preferences. For example, both Democrats and Republicans favor the resumes of those affiliated with their political party much more than they favor those who share their race. These coalition-based preferences remain powerful even in the absence of the animosity present in electoral politics. Our research has shown that the simple act of placing people on a mixed-race team can diminish their automatic racial bias. In a series of experiments, White participants who were randomly placed on a mixed-race team—the Tigers or Lions—showed little evidence of implicit racial bias. Merely belonging to a mixed-race team trigged positive automatic associations with all of the members of their own group, irrespective of race. Being a part of one of these seemingly trivial mixed-race groups produced similar effects on brain activity—the amygdala responded to team membership rather than race. Taken together, these studies indicate that momentary changes in group membership can override the influence of race on the way we see, think about, and feel toward people who are different from ourselves. Although these coalition-based distinctions might be the most basic building block of bias, they say little about the other factors that cause group conflict. Why do some groups get ignored while others get attacked? Whenever we encounter a new person or group we are motivated to answer two questions as quickly as possible: “is this person a friend or foe?” and “are they capable of enacting their intentions toward me?” In other words, once we have determined that someone is a member of an out-group, we need to determine what kind? The nature of the relations between groups—are we cooperative, competitive, or neither?—and their relative status—do you have access to resources?—largely determine the course of intergroup interactions. Groups that are seen as competitive with one’s interests, and capable of enacting their nasty intentions, are much more likely to be targets of hostility than more benevolent (e.g., elderly) or powerless (e.g., homeless) groups. This is one reason why sports rivalries have such psychological potency. For instance, fans of the Boston Red Sox are more likely to feel pleasure, and exhibit reward-related neural responses, at the misfortunes of the archrival New York Yankees than other baseball teams (and vice versa)—especially in the midst of a tight playoff race. (How much fans take pleasure in the misfortunes of their rivals is also linked to how likely they would be to harm fans from the other team.) Just as a particular person’s group membership can be flexible, so too are the relations between groups. Groups that have previously had cordial relations may become rivals (and vice versa). Indeed, psychological and biological responses to out-group members can change, depending on whether or not that out-group is perceived as threatening. For example, people exhibit greater pleasure—they smile—in response to the misfortunes of stereotypically competitive groups (e.g., investment bankers); however, this malicious pleasure is reduced when you provide participants with counter-stereotypic information (e.g., “investment bankers are working with small companies to help them weather the economic downturn). Competition between “us” and “them” can even distort our judgments of distance, making threatening out-groups seem much closer than they really are. These distorted perceptions can serve to amplify intergroup discrimination: the more different and distant “they” are, the easier it is to disrespect and harm them. Thus, not all out-groups are treated the same: some elicit indifference whereas others become targets of antipathy. Stereotypically threatening groups are especially likely to be targeted with violence, but those stereotypes can be tempered with other information. If perceptions of intergroup relations can be changed, individuals may overcome hostility toward perceived foes and become more responsive to one another’s grievances. The flexible nature of both group membership and intergroup relations offers reason to be cautiously optimistic about the potential for greater cooperation among groups in conflict (be they black versus white or citizens versus police). One strategy is to bring multiple groups together around a common goal. For example, during the fiercely contested 2008 Democratic presidential primary process, Hillary Clinton and Barack Obama supporters gave more money to strangers who supported the same primary candidate (compared to the rival candidate). Two months later, after the Democratic National Convention, the supporters of both candidates coalesced around the party nominee—Barack Obama—and this bias disappeared. In fact, merely creating a sense of cohesion between two competitive groups can increase empathy for the suffering of our rivals. These sorts of strategies can help reduce aggression toward hostile out-groups, which is critical for creating more opportunities for constructive dialogue addressing greater social injustices. Of course, instilling a sense of common identity and cooperation is extremely difficult in entrenched intergroup conflicts, but when it happens, the benefits are obvious. Consider how the community leaders in New York City and Ferguson responded differently to protests against police brutality—in NYC political leaders expressed grief and concern over police brutality and moved quickly to make policy changes in policing, whereas the leaders and police in Ferguson responded with high-tech military vehicles and riot gear. In the first case, multiple groups came together with a common goal—to increase the safety of everyone in the community; in the latter case, the actions of the police likely reinforced the “us” and “them” distinctions. Tragically, these types of conflicts continue to roil the country. Understanding the psychology and neuroscience of social identity and intergroup relations cannot undo the effects of systemic racism and discriminatory practices; however, it can offer insights into the psychological processes responsible for escalating the tension between, for example, civilians and police officers. Even in cases where it isn’t possible to create a common identity among groups in conflict, it may be possible to blur the boundaries between groups. In one recent experiment, we sorted participants into groups—red versus blue team—competing for a cash prize. Half of the participants were randomly assigned to see a picture of a segregated social network of all the players, in which red dots clustered together, blue dots clustered together, and the two clusters were separated by white space. The other half of the participants saw an integrated social network in which the red and blue dots were mixed together in one large cluster. Participants who thought the two teams were interconnected with one another reported greater empathy for the out-group players compared to those who had seen the segregated network. Thus, reminding people that individuals could be connected to one another despite being from different groups may be another way to build trust and understanding among them. A mere month before Freddie Gray died in police custody, President Obama addressed the nation on the 50th anniversary of Bloody Sunday in Selma: “We do a disservice to the cause of justice by intimating that bias and discrimination are immutable, or that racial division is inherent to America. To deny…progress – our progress – would be to rob us of our own agency; our responsibility to do what we can to make America better." The president was saying that we, as a society, have a responsibility to reduce prejudice and discrimination. These recent findings from psychology and neuroscience indicate that we, as individuals, possess this capacity. Of course this capacity is not sufficient to usher in racial equality or peace. Even when the level of prejudice against particular out-groups decreases, it does not imply that the level of institutional discrimination against these or other groups will necessarily improve. Ultimately, only collective action and institutional evolution can address systemic racism. The science is clear on one thing, though: individual bias and discrimination are changeable. Race-based prejudice and discrimination, in particular, are created and reinforced by many social factors, but they are not inevitable consequences of our biology. Perhaps understanding how coalitional thinking impacts intergroup relations will make it easier for us to affect real social change going forward.

### 2AC --- Alt

#### Epistemology is secondary to the plan’s harm reduction -- the alt causes endless debates at the cost of material improvements in the day to day.

**Jarvis ’0** [Darryl; 2000; Former Senior Lecturer in International Relations at the University of Sydney; *International Relations and the Challenge of Postmodernism*, *University of South Carolina Press*, “Continental Drift,” p. 128-129; GR]

More is the pity that such irrational and obviously abstruse debate should so occupy us at a time of great global turmoil. That it does and continues to do so reflect our lack of judicious criteria for evaluating theory and, more importantly, the lack of attachment theorists have to the real world. Certainly, it is right and proper that we ponder the depths of our theoretical imaginations, engage in epistemological and ontological debate, and analyze the sociology of our knowledge. But to support that this is the only task of international theory, let alone the most important one, smacks of intellectual elitism and displays a certain contempt for those who search for guidance in their daily struggle as actors in international politics. What does Ashley’s project, his deconstructive efforts, or valiant fight against positivism say to the truly marginalized, oppressed, and destitute? How does it help solve the plight of the poor, the displaced refugees, the casualties of war, or the émigrés of death squads? Does it in any way speak to those whose actions and thoughts comprise the policy and practice of international relations?

On all these questions one must answer no. This is not to say, of course, that all theory should be judged by its technical rationality and problem-solving capacity as Ashley forcefully argues. But to support that problem-solving technical theory is not necessary—or in some way bad—is a contemptuous position that abrogates any hope of solving some of the nightmarish realities that millions confront daily. As Holsti argues, we need ask of these theorists and their theories the ultimate question, “So what?” To what purpose do they deconstruct, problematize, destabilize, undermine, ridicule, and belittle modernist and rationalist approaches? Does this get us any further, make the world any better, or enhance the human condition? In what sense can this “debate toward [a] bottomless pit of epistemology and metaphysics” be judged pertinent, relevant, helpful, or cogent to anyone other than those foolish enough to be scholastically excited by abstract and recondite debate.

#### Their method would invite unfathomable scales of crackdowns.

Flaherty 5 USC BA in International Relations, researcher in political affairs, activist and organic farmer in New Zealand, <http://cryptogon.com/docs/pirate_insurgency.html>

[ACS = American Corporate State]

THE NATURE OF ARMED INSURGENCY AGAINST THE ACS Any violent insurgency against the ACS is sure to fail and will only serve to enhance the state's power. The major flaw of violent insurgencies, both cell based (Weathermen Underground, Black Panthers, Aryan Nations etc.) and leaderless (Earth Liberation Front, People for the Ethical Treatment of Animals, etc.) is that they are attempting to attack the system using the same tactics the ACS has already mastered: terror and psychological operations. The ACS attained primacy through the effective application of terror and psychological operations. Therefore, it has far more skill and experience in the use of these tactics than any upstart could ever hope to attain.4 This makes the ACS impervious to traditional insurgency tactics. - Political Activism and the ACS Counterinsurgency Apparatus The ACS employs a full time counterinsurgency infrastructure with resources that are unimaginable to most would be insurgents. Quite simply, violent insurgents have no idea of just how powerful the foe actually is. Violent insurgents typically start out as peaceful, idealistic, political activists. Whether or not political activists know it, even with very mundane levels of political activity, they are engaging in low intensity conflict with the ACS. The U.S. military classifies political activism as “low intensity conflict.” The scale of warfare (in terms of intensity) begins with individuals distributing anti-government handbills and public gatherings with anti-government/anti-corporate themes. In the middle of the conflict intensity scale are what the military refers to as Operations Other than War; an example would be the situation the U.S. is facing in Iraq. At the upper right hand side of the graph is global thermonuclear war. What is important to remember is that the military is concerned with ALL points along this scale because they represent different types of threats to the ACS. Making distinctions between civilian law enforcement and military forces, and foreign and domestic intelligence services is no longer necessary. After September 11, 2001, all national security assets would be brought to bear against any U.S. insurgency movement. Additionally, the U.S. military established NORTHCOM which designated the U.S. as an active military operational area. Crimes involving the loss of corporate profits will increasingly be treated as acts of terrorism and could garner anything from a local law enforcement response to activation of regular military forces. Most of what is commonly referred to as “political activism” is viewed by the corporate state's counterinsurgency apparatus as a useful and necessary component of political control. Letters-to-the-editor... Calls-to-elected-representatives... Waving banners... “Third” party political activities... Taking beatings, rubber bullets and tear gas from riot police in free speech zones... Political activism amounts to an utterly useless waste of time, in terms of tangible power, which is all the ACS understands. Political activism is a cruel guise that is sold to people who are dissatisfied, but who have no concept of the nature of tangible power. Counterinsurgency teams routinely monitor these activities, attend the meetings, join the groups and take on leadership roles in the organizations. It's only a matter of time before some individuals determine that political activism is a honeypot that accomplishes nothing and wastes their time. The corporate state knows that some small percentage of the peaceful, idealistic, political activists will eventually figure out the game. At this point, the clued-in activists will probably do one of two things; drop out or move to escalate the struggle in other ways. If the clued-in activist drops his or her political activities, the ACS wins. But what if the clued-in activist refuses to give up the struggle? Feeling powerless, desperation could set in and these individuals might become increasingly radicalized. Because the corporate state's counterinsurgency operatives have infiltrated most political activism groups, the radicalized members will be easily identified, monitored and eventually compromised/turned, arrested or executed. The ACS wins again.

#### No chance any grab for power succeeds

Fredrik deBoer 16, Limited-Term Lecturer, Introductory Composition at Purdue Program, 3/15/16, “c’mon, guys,” http://fredrikdeboer.com/2016/03/15/cmon-guys/

I could be wrong about the short-term dangers, and the stakes are incredibly high. But in the end we’re left with the same old question: what tactics will actually work to secure a better world?

In a sharp, sober piece about the meaning of left-wing political violence in the 1970s, Tim Barker writes “If you can’t acknowledge radical violence, radicals are reduced to mere victims of repression, rather than political actors who made definite tactical choices under given political circumstances.” The problem, as Barker goes on to imply, is those tactical choices: in today’s America they will essentially never break on the side of armed opposition against the state. The government knows everything about you, I’m sorry to say, your movements and your associations and the books you read and the things you buy and what you’re saying to the people you communicate with. That’s simply on the level of information, before we even get to the state’s incredible capacity to inflict violence. Look, the world has changed. The relative military capacity of regular people compared to establishment governments has changed, especially in fully developed, technology-enabled countries like the United States. The Czar had his armies, yes, but the Czar’s armies depended on manpower above and beyond everything else. The fighting was still mostly different groups of people with rifles shooting at each other. If tomorrow you could rally as many people as the Bolsheviks had at their revolutionary peak, you’re still left in a world of F-15s, drones, and cluster bombs. And that’s to say nothing of the fact that establishment governments in the developed world can rely on the numbing agents of capitalist luxuries and the American dream to damper revolutionary enthusiasm even among the many millions who have been marginalized and impoverished. This just isn’t 1950s Cuba, guys. It’s just not. In a very real way, modern technology effectively lowers the odds of armed political revolution in a country like the United States to zero, and so much the worse for us. This isn’t fatalism. It doesn’t mean there’s no hope. It means that there is little alternative to organization, to changing minds through committed political action and using the available nonviolent means to create change: a concert of grassroots organizing, labor tactics, and partisan politics. Those things aren’t exactly likely to work, either, but they’re a hell of a lot more plausible than us dweebs taking the Pentagon. Bernie Sanders isn’t really a socialist, but he’s a social democrat that moves the conversation to the left, and if people are dedicated and committed to organizing, the local, state, and national candidates he inspires will move it further to the left still. You got any better suggestions? Listen, commie nerds. My people. I love you guys. I really do. And I want to build a better world. Not incrementally, either, but with the kind of sweeping and transformative change that is required to fix a world of such deep injustice. But seriously: none of us are ever going to take to the barricades. And it’s a good thing, too, because we’d probably find a way to shoot in the wrong direction. I can’t dribble a basketball without falling down. American socialism is largely made up of bookish dreamers. I love those people but they’re not for fighting. And even if you have a particular talent for combat, you’re looking at fighting the combined forces of Google, Goldman Sachs, and the defense industry. Violence is hard. Soldiering is hard. In an era of the NSA and military robots, it’s really, really hard. “Should we condone revolutionary violence?” is dorm room, pass-the-bong conversation fodder, of precisely the moral and intellectual weight of “should we torture a guy if we know there’s a bomb and we know he knows where it is and we know we can stop it if we do?” It’s built on absurd hypotheticals, propped up by the power of anxious machismo, and undertaken to no practical political end. It’s understandable. I get it, I really do. But it’s got nothing to do with us. The only way forward is the grubby, unsexy work of building coalitions and asking people to climb on board.

#### Elites nuke the alt

Jensen 6 (Derrick Jensen 6, Eastern Washington University, Endgame: Resistance, p. 873)

HOW WILL THE CRASH PLAY OUT? PREDICTING THE FUTURE IS ALWAYS a sketchy endeavor, and I believe this is especially true for the crash of civilization. There are too many variables, and there will be too many bifurcation points. Will a plague of antibiotic-resistant bacteria hit humans so hard the human population plummets? Maybe the crash will come through a genetically modified virus, whether released by a Twelve Monkeys protégé, someone who hates the U.S. government, the U.S. government itself (remember the line from Rebuilding America’s Defenses, that “advanced forms of biological warfare that can ‘target’ specific genotypes may transform biological warfare from the realm of terror to a politically useful tool.”359), or perhaps most likely of all, Bayer or Monsanto. Maybe peak oil will bring it all down. Maybe global warming. Maybe hackers and ex-military people. Maybe soil loss. Maybe water loss. Maybe nukes: I have absolutely no doubt that when those who run the United States feel their power slipping, whether through oil shortages, external invasion, **internal revolt**, or ecological collapse, they will have no moral qualms about nuking anywhere they feel necessary, including places in the United States (hell, they’ve bombed Nevada for decades now). Indeed, I have great fears that when they feel their power slipping—and slip it will no matter what anyone does—**they may blow up the entire planet before they give up their losing game**. I asked Dean and Brian if they thought hackers could prevent this. They said, “No. I’m sure we could hack our way into a dozen or so missile sites and prevent them from being fired but there’s no way we could get in to stop them all. There are thousands and thousands. There’s just too many.”