### 1

#### Interpretation: Topical affirmatives must instrumentally defend an expansion of the scope of the United States core antitrust laws to substantially increase prohibitions on anticompetitive business practices.

#### Resolved means a policy

Louisiana House 5

(<http://house.louisiana.gov/house-glossary.htm>)

Resolution A legislative instrument that generally is used for making declarations, stating policies, and making decisions where some other form is not required. A bill includes the constitutionally required enacting clause; a resolution uses the term "resolved". Not subject to a time limit for introduction nor to governor's veto. ( Const. Art. III, §17(B) and House Rules 8.11 , 13.1 , 6.8 , and 7.4)

#### Federal government is the legislative, executive and judicial

US Legal No Date (United States Federal Government Law and Legal Definition https://definitions.uslegal.com/u/united-states-federal-government/)

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

#### Should requires action

AHD 2k

(American Heritage Dictionary 2000 (Dictionary.com))

should. The will to do something or have something take place: I shall go out if I feel like it.

#### ‘Its’ means United States Antitrust Laws.

US District Court 7 (United States District Court for the District of the Virgin Islands, Division of St. Thomas and St. John, “AGF Marine Aviation & Transp. v. Cassin,” *2007 U.S. Dist. LEXIS 90808*, Lexis)

The Court inadvertently used the word "his" when the Court intended to use the word "its." The possessive pronoun was intended to refer to the party preceding its use--AGF. Indeed, that reference is consistent with the undisputed facts in this case, which indicate that Cassin completed an application for the insurance policy and submitted it to his agent, Theodore Tunick & Company ("Tunick"). Tunick, in turn, submitted the application to AGF's underwriting agent, TL Dallas. (See Pl.'s Mem. of Law in Supp. of Mot. for Summ. J. 5.)

#### The “core” antitrust statutes are the Sherman Act, Clayton Act, and FTC Act

Lisa Kimmel 20, Senior Counsel at Crowell & Moring, LLP in Washington, D.C., twenty years of experience as an antitrust lawyer and holds a Ph.D. in economics from the University of California at Berkeley; and Eric Fanchiang, associate in Crowell & Moring’s Irvine, CA office and a member of the firm’s antitrust and commercial litigation groups, 2020, “Antitrust and Intellectual Property Licensing,” in 2020 Licensing Update, Wolters Kluwer Legal & Regulatory U.S., https://www.crowell.com/files/20200401-Licensing-Update-Chapter-13.pdf

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

#### Violation: The aff violates the above words requirements of government action

#### Prefer our interpretation-

#### 1---Fairness---debate is a competitive game with a winner and a loser---keeping the game equitable is essential to all of its benefits---allowing untopical advocacies causes the aff to win disproportionally---the ballot can’t resolve their offense but it can remedy a fairness violation

#### 2---Clash---The only intrinsic benefit from debate comes from clash over particular issues---a limited point of predictable stasis for that discussion improves the quality of that clash and allows the negative to more rigorously test whatever the affirmative proposes. The impact is methodological humility. Clash breaks down dogma both by exposing the flaws in one’s argument and by incentivizing teams to think about how their opponents might respond to their arguments to gain a better understanding of their own position’s weakness.

### Case

#### Here is an example of a black woman who advocates increased antitrust enforcement in labor markets

Doha Mekki 19, Counsel to the Assistant Attorney General in the Antitrust Division of the United. States Department of Justice. (Counsel to the Assistant Attorney General of the Antitrust Division Doha Mekki Testifies Before House Judiciary Committee on Antitrust and Economic Opportunity: Competition in Labor Markets, October 29, 2019, <https://www.justice.gov/opa/speech/counsel-assistant-attorney-general-antitrust-division-doha-mekki-testifies-house>) 

Today’s topic could not be more timely or important. While labor competition issues have attracted interest at various times in the history of antitrust enforcement, recent national interest in the topic likely has its roots in the aftermath of the 2008 Financial Crisis. As labor economists, scholars, and policymakers set out to understand why wage stagnation continued despite declining unemployment rates during the economic recovery, many stakeholders looked to antitrust for possible solutions. To be sure, the challenges facing the American worker are both complex and numerous. While antitrust is not a panacea for resolving every societal ill, it is undoubtedly an important tool for ensuring robust competition for workers. Anticompetitive behavior and transactions are possible in a labor market just as they are in other markets. Accordingly, enforcers and courts alike have reaffirmed the important principle that antitrust law seeks to preserve the free market opportunities of both buyers and sellers of employment services. Indeed, the Antitrust Division of the U.S. Department of Justice (Division) has taken companies to court in order to give meaning to this fundamental proposition of law. As discussed infra, labor competition issues are a high priority for Assistant Attorney General Delrahim and for the Antitrust Division. We have devoted significant resources to enforcement and advocacy in this area recently. The idea that unlawful corporate power can harm both buyers and sellers of labor rests in the foundations of U.S. antitrust law. In supporting the passage of the law that came to bear his name, Senator John Sherman of Ohio warned that monopoly power: [C]an control the market, raise or lower prices, as will best promote its selfish interests, reduce prices in a particular locality and break down competition and advance prices at will where competition does not exist. […] The law of selfishness, uncontrolled by competition, compels it to disregard the interest of the consumer. It dictates terms to transportation companies, it commands the price of labor without fear of strikes, for in its field it allows no competitors. Such a combination is far more dangerous than any heretofore invented, and . . . by the rule of both the common and the civil law, is null and void and the just subject of restraint by the courts, of forfeiture of corporate rights and privileges, and in some cases should be denounced as a crime, and the individuals engaged in it should be punished as criminals. That corporate power can harm workers was not particularly novel even in 1890 when the Sherman Act was passed. More than 100 years earlier, the Scottish economist Adam Smith observed: We rarely hear, it has been said, of the combinations of masters; though frequently of those of workmen. But whoever imagines, upon this account, that masters rarely combine, is as ignorant of the world as of the subject. Masters are always and everywhere in a sort of tacit, but constant and uniform combination, not to raise the wages of labor above their actual rate. That Adam Smith is revered as the father of free-market economics and also someone who was rightly concerned about the position of workers parallels an important point: there is no faithful reading of the law, economics, or the legislative history of the antitrust laws that excludes competition for the American worker. Where companies or individuals engage in anticompetitive conduct in a labor market, antitrust enforcers must quickly step in to enforce the law.

#### She advocates for increased enforcement against no poach agreements

Doha Mekki 19, Counsel to the Assistant Attorney General in the Antitrust Division of the United. States Department of Justice. (Counsel to the Assistant Attorney General of the Antitrust Division Doha Mekki Testifies Before House Judiciary Committee on Antitrust and Economic Opportunity: Competition in Labor Markets, October 29, 2019, <https://www.justice.gov/opa/speech/counsel-assistant-attorney-general-antitrust-division-doha-mekki-testifies-house>) 

A no-poach agreement is an agreement between two or more employers not to solicit, cold-call, recruit, interview, hire without permission, or otherwise compete for workers. It can be formal or informal, written or unwritten, and exist in any industry. A wage-fixing agreement is an agreement between two or more employers who compete for workers regarding employee salary, wages, benefits, or other terms of compensation, either at a specific level or within a range. These types of agreements can be anticompetitive because they restrict worker mobility, and distort the normal bargaining and price-setting mechanisms that would otherwise apply in a labor context. In 2007, the Division sued the Arizona Hospital and Healthcare Association, a trade group acting on behalf of Arizona hospitals that used a registry program to fix certain terms and conditions about temporary nursing personnel. It also set a uniform bill rate schedule that the hospitals would pay for temporary and per diem nurses. Between 2010 and 2012, the Division sued Adobe, Apple, Google, Intel, Intuit, Lucasfilm, Pixar, and eBay for entering into unlawful no-poach agreements. In April 2018, the Division sued the world’s largest train equipment manufacturers, Knorr-Bremse and Westinghouse Air Brake Technologies Corporation, for entering into unlawful no-poach agreements. As part of the resolution of that case, the companies were required to immediately halt their illegal conduct, enter into a broad seven-year injunction, and implement rigorous compliance and reporting obligations. Moreover, the Antitrust Division required the companies to notify employees, recruiters, and the industry at large of their settlement with the Division. In addition, the companies were required to cooperate in any future investigations by the Division into alleged no-poach agreements with other employers. Criminal Enforcement of “Naked” No-Poach and Wage-Fixing Agreements The Division has had significant experience investigating no-poach and wage-fixing agreements. That experience made clear that naked no-poach and wage-fixing agreements are indistinguishable from and eliminate competition in the same irredeemable way as agreements to fix product prices or allocate customers.7 That conclusion is not merely formalistic but reflects consideration of the real harms that are likely to flow from such arrangements, including lower wages and reduced worker mobility. Moreover, they distort competition to the detriment of employees by depriving them of the chance to bargain for better job opportunities and terms of employment. Further, market allocation agreements cannot be distinguished from one another based solely on whether they involve input or output markets. Consistent with these precedents, the United States has challenged naked no-poach agreements that are not reasonably necessary to a separate, legitimate business transaction or collaboration as per se unlawful allocations agreements in labor markets under Section 1 of the Sherman Act – that is, without elaborate inquiry into the actual effects of the agreements. Beginning in October 2016, the Division made a number of public announcements that it intends to prosecute naked no-poach and wage-fixing agreements criminally. In particular, the Division explained that it intends to proceed criminally against agreements that began or continued after October 2016. As a matter of prosecutorial discretion, the Division will resolve no-poach agreements that were entered into and terminated before that date by civil action. These public statements were made in order to give the public additional clarity regarding our intentions going forward. Competitive labor markets require timely and effective antitrust enforcement. Inaction is not a price the public can afford. So while the time and effort required to build a criminal case is intensive, corporate and individual liability is also necessary to punish economic conspiracies and deter their recurrence.

#### And here is another black woman advocating use of antitrust class action suits in the context of no poach labor agreements

Dionne Lomax 18, Lecturer in Law at Boston University. (DOJ Targets No Poach Agreements for Antitrust Review By Dionne Lomax | The National Law Review, https://muckrack.com/dionne-lomax/articles)

A close-up of a person smiling

Description automatically generated

The DOJ challenged the no-poach agreements as a per se violation of Section 1 of the Sherman Act. 15 U.S.C. § 1. Section 1 of the Sherman Act addresses anticompetitive conduct that results from concerted action. It prohibits contracts, combinations and conspiracies that unreasonably restrain trade. Under Section 1, particularly egregious agreements among horizontal competitors, such as price-fixing, market allocation, and group boycotts, are deemed per se unlawful. However, not all agreements among competitors to refrain from hiring each other’s employees are deemed per se unlawful. Similar agreements that are reached in the context of a legitimate business transaction or collaboration (e.g., joint venture or the sale of a business) between companies may be viewed as reasonably necessary to achieve the purpose of the transaction or collaborative arrangement. Thus, in the context of a larger legitimate business arrangement, no-poach provisions could be viewed as a valid ancillary restraint. To be clear, the DOJ does not prohibit all agreements related to employee solicitation and recruitment. In previous challenges to similar conduct, it has clarified that its enforcement actions do not prohibit non-solicitation provisions reasonably necessary for: (1) mergers or acquisitions (consummated or unconsummated), investments, or divestitures, including due diligence related actions; (2) contracts with consultants or recipients of consulting services, auditors, outsourcing vendors, recruiting agencies or providers of temporary employees or contract workers; and (3) the settlement or compromise of legal disputes. U.S. v. Adobe Systems, Inc. et al., No. 1:10-cv-01629 (2010) (regarding antitrust claims against Adobe Systems, Inc., Apple, Inc., Google Inc., Intel Corporation, Intuit, Inc. and Pixar for engaging in a series of bilateral no-poach agreements). The DOJ characterized the no-poach agreement between Knorr and Wabtec as a naked restraint that was not reasonably necessary to any separate transaction. It allegedly spanned several years and was “monitored and enforced by high-level company executives.” According to the Antitrust Division, the no-poach agreement between Knorr and Wabtec “had the effect of unlawfully allocating employees between the companies,” and resulted in harm to U.S. workers and consumers by limiting their access to better job opportunities, restricting their mobility, and depriving them of competitively significant information they could have used to negotiate for better terms of employment. The DOJ simultaneously filed a proposed settlement setting forth the terms of the settlement (known as a consent decree) with the parties. The consent decree prohibits Knorr and Wabtec from entering into, maintaining, or enforcing no-poach agreements with another employer, subject to certain limited exceptions. Knorr and Wabtec each agreed to unilaterally withdraw from and to refrain from enforcing any prohibited no-poach agreement they may have had with any other employers related to employees located or being hired to work in the U.S. As part of the settlement, Knorr and Wabtec also agreed to cooperate with the DOJ in any investigation into additional no-poach agreements to which they may have been counterparties. Notably, the Antitrust Division’s press release highlights the announcements it began making in October 2016 regarding its intention to bring criminal charges against culpable companies and individuals who entered into similar no-poach agreements. It notes, however, that “[i]n an exercise of prosecutorial discretion, the department will pursue as civil violations no-poach agreements that were formed and terminated before those announcements were made.” Knorr and Wabtec’s no-poach agreements were discovered by the DOJ and terminated by the parties before October 2016. From an antitrust perspective, firms that compete to hire or retain employees are competitors in the employment marketplace. This is true even if the products and services that they sell do not necessarily compete in the same product market. It is unlawful for competitors to expressly or implicitly agree not to compete with one another, even if they are motivated by a desire to reduce costs or obtain other efficiencies. As evidenced by a similar enforcement action brought against six technology companies in 2010 (who entered into a consent decree to settle the charges), the DOJ is vigilant regarding its enforcement of no-poach agreements and will undoubtedly bring criminal charges to resolve similar conduct going forward. Entering into anticompetitive no-poach agreements can also spark private antitrust lawsuits by those injured by the anticompetitive conduct. In private antitrust actions, a prevailing plaintiff can recover three times their actual damages. Thus, private antitrust lawsuits can expose defendants to significant monetary penalties. Private antitrust actions often arise as follow-on complaints after a successful government case. As such, it was no surprise to see that on April 11, a proposed class of current and former employees of Knorr and Wabtec filed an antitrust complaint in federal court in Pennsylvania challenging the no-poach agreements as per se unlawful and seeking treble damages for the proposed class members. A similar private antitrust action was filed by a professor of radiology against Duke Medical School for allegedly entering into a no-hire agreement with the University of North Carolina, which allegedly cost the professor a job opportunity. In January 2018, a district court judge ruled that the professor’s antitrust lawsuit could be expanded into a class action lawsuit.

#### And here is a black woman who celebrates black women involvement in the law and in the federal judiciary

Robinson 3/6/22, former judge and visiting professor at Quinnipiac University School of Law, (Angela, Why it’s time for Black women state supreme court justices, <https://thehill.com/blogs/congress-blog/judicial/597064-why-its-time-for-black-women-state-supreme-court-justices/>) Application

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President Biden’s nomination of Ketanji Brown Jackson, who stands to become the first Black woman to the United States Supreme Court, is a revelation of the breadth and depth of the talent of Black American women lawyers and jurists. This new focus is most welcome to those of us who have long championed the oversight of Black women judges on the highest courts in all jurisdictions. While I’m heartened by the high-profile nature of Jackson’s nomination, other blind spots still exist as state supreme courts have skirted the same kind of national scrutiny. Sadly, more than half the states in the United States, including my own home state of Connecticut, have never had a Black woman on their highest court. This, despite the fact that Black women have been members of the bar since Charlotte E. Ray’s admission in 1872 in the District of Columbia. This, despite the fact that the first Black woman judge in the United States was appointed in 1939 in New York. This, despite the fact that Black women have been proving themselves as able appellate court jurists since 1975, when Julia Cooper Mack was appointed to the District of Columbia Court of Appeals by President Gerald Ford, and 1979, when President Jimmy Carter appointed Judge Amalya Kearse to the Second Circuit Court of Appeals. There are objectively beneficial reasons to support Black women on a state court of last resort, like a supreme court. Of course, diversity is always a good thing. We know that diverse groups often reach better, well-thought out and considered outcomes. For instance, diverse juries spend more time evaluating the evidence, debating the issues and considering multiple perspectives. Also, diverse representation in courts helps instill public trust in the judicial system. When citizens see themselves reflected, they are more likely to trust the process and the outcomes. Who is in the room when serious decisions are made, matters. The unique voices and perspectives Black women bring is uniquely distinct from those of white women or men; and from those of Black men. Black women are not all the same, though. Therefore, each is unique and distinct and brings her singular life experience to the world. What they share is a lived experience of Black womanhood in the U.S. That life experience is extremely valuable, in fact, it is necessary, in my view, on state supreme courts. Though there is no central database curating this information, from my research I have observed that the progress of Black women in state judiciary branches varies. It appears that 27 states have never had a Black woman on the court of last resort, 21 of which have never had any Black woman on any intermediary state appellate court either. Also, of the states in which Black women have been able to break through the glass ceiling to reach their state’s highest court, about one-third (eight of 21) have only marked that achievement in the last ten years. And, sadly, when Black women have left these courts, they are rarely replaced or succeeded by other Black women, making them often the first and only one in their state. State supreme courts decide critical issues that affect the lives and livelihood of their state residents. They determine issues of state constitutional merit, and have the final say on the interpretation of state laws. Where state law is concerned, the buck stops with these state courts of last resort. 2022 is the perfect time for all states which have not done so to reexamine the elevation of a Black woman to their supreme or appellate courts. Such an elevation will improve the quality and esteem of their court as we become an increasingly diverse nation. Fortunately, virtually every state that has not had a Black woman on its court of last resort currently has esteemed Black women scholars, jurists and lawyers. Many have Black women on their intermediary, appellate court, but the list of potential justices includes legal scholars like the following law school deans. Dean Patricia Bennett (Mississippi College School of Law); Dean Camille Davidson (Southern Illinois Law School); Dean Linda Greene (Michigan State Law School); Dean Lolitta Buckner Innis (University of Colorado Law School); Assoc. Dean Shirley Jefferson (Vermont Law School); Dean Camille Nelson (Hawaii Law School).

#### Here is a black woman who celebrates the involvement of black women in politics

Turner 21, First black woman president of the League of Women Voters of the United States and chair of the Board of Trustees of the League of Women Voters (Deboarah, Education Fund Celebrating Black Women Who Helped Pave the Way for More Black Women in Politics, https://www.lwv.org/blog/celebrating-black-women-who-helped-pave-way-more-black-women-politics) A person smiling for the camera

Description automatically generated with low confidence

Shirley Chisholm elevated the voice of black women in politics in the 1960s overcoming many dangerous obstacles and blatant racism. She Chisholm began her activism in the 1960s by working in organizations that fought for voting rights, including the League, promoting civic education, and championing civil rights. She was the first Black woman to serve in Congress and the first Black person to run for president in a major party. Seeing Kamala Harris elected vice president, I believe, would have bought her joy, fulfillment, and the urge to continue the fight. Barbara Jordan, the first black woman elected to the Texas legislature represented the voters of Houston at the height of the civil rights movement. She was also the first Black woman elected to Congress from the deep South. Jordan had the honor of delivering the keynote address at the Democratic National Convention in 1976, where she noted that her presence, “...is one additional bit of evidence that the American dream need not forever be deferred." I believe she would have seen Vice President Harris’s election as a next step toward that dream that had been too long deferred. The opportunity for these black women to serve as elected officials would not have been realized without the dangerous and determined work of civil rights leaders like Fannie Lou Hamer. Hamer fought to expand the vote to Black people against all odds. In 1962, Hammer organized volunteers to register Black Americans to vote in Mississippi, but they were denied registration due to unfair literacy tests. Despite losing her job for attempting to vote, Hammer took the literacy tests two more times and passed. However, another barrier was put in place, the requirement for two poll tax receipts. For every step forward there was a system working to implement new suppression tactics to prevent Black voters from exercising their constitutional right. Even then Fannie Lou Hamer wouldn’t be silenced. Two years later she co-founded the Mississippi Freedom Party and challenged the all-white Democratic delegation from Mississippi at the 1964 Democratic National Convention, delivering testimony that brought to life the real struggle Black people in the South experienced when trying to participate in elections. There are hundreds of stories like these– stories of brave women in every state of the union who fought for their constitutional rights to participate in our elections – and those who broke barriers and became the first to seek elected office. We honor their impact and bravery to pave the way for more Black women. And we like them, want to make sure being the first does not mean being the last. The 2020 election had the highest voter participation in American history, ushering in more people of color and more Black women into elected office than ever before. According to the Center for American Women in Politics, in the 117th Congress, 26 Black women currently serve in the U.S. House of Representatives, but there are no Black women serving in the Senate since Vice President Harris ascended to the White House. In-state legislatures around the country, more than 300 Black women were elected to statehouse offices, and of the top 100 largest cities in America, six Black women currently serve as mayors. Let us also acknowledge the many Black women who serve as are mayors and elected officials in the many communities that we don’t see on the six o’clock news. They are working hard too and making a difference. While these numbers are a step in the right direction, as only the second Black woman elected president of the League of Women Voters in 100 years, it is clear that representation of Black women and women of color in politics and leadership roles in our country still has a long way to go. We must continue to tell the stories of Black women that will inspire the next generation of Black women to seek elected office. We must never forget our history, and the tireless work of Black women and allies to advance voting rights, push for change, and continue to shape a more equitable America. More importantly, white America must be moved to appreciate, acknowledge, and understand the contributions to our country by these women and their other colleagues of color.

#### The politics of academic refusal are a disaster – they assume a transformative potential from small moments of resistance that simply does not exist.

Reed 16 (Adolph, Jr., Prof. of Political Science @ Penn., “Splendors and Miseries of the Antiracist “Left”” *Nonsite*, <http://nonsite.org/editorial/splendors-and-miseries-of-the-antiracist-left-2>)

More than a decade and a half ago I criticized similar formulations of a notion of “infrapolitics,” understood as the domain of pre-political acts of everyday “resistance” undertaken by subordinated populations, which was then all the rage in cultural studies programs. Proponents of the political importance of this domain insisted that, because insurgent movements emerge within such cultures of quotidian resistance, a) examining them could help in understanding the processes through which insurgencies develop and/or b) they therefore ought to be considered as expressions of an insurgent politics themselves. Several factors accounted for the popularity of that version of the argument, which mainly had to do to with the political economy of academic life, including the self-propulsion of academic trendiness and the atrophy of the left outside the academy, which encouraged flights into fantasy for the sake of optimism. The infrapolitics idea also resonated with the substantive but generally unadmitted group essentialism underlying claims that esoteric, insider knowledge is necessary to decipher the “hidden transcripts” of the subordinate populations; put more bluntly, elevating infrapolitics to the domain on which the oppressed express their politics most authentically increased its interpreters’ academic capital.8

I discussed those factors in my critique. However, the point in that argument most pertinent for evaluating Birch and Heideman’s confidence that the contradictions they acknowledge in BLM should be seen only as growing pains of a “new movement” is the following:

At best, those who romanticize “everyday resistance” or “cultural politics” read the evolution of political movements teleologically; they presume that those conditions necessarily, or even typically, lead to political action. They don’t. Not any more than the presence of carbon and water necessarily leads to the evolution of Homo sapiens. Think about it: infrapolitics is ubiquitous, developed political movements are rare.9

#### Survival first is a regressive dyadic interpretation of power that is infinitely regressive and destroys agency – it is the ultimate desubjectifying submission to neoliberalism.

Brunila 14 (Kristiina, Professor of Social Justice and Equality in Education in the University of Helsinki in Finland, Education Inquiry, 5(1), “The Rise of the Survival Discourse in an Era of Therapisation and Neoliberalism,” <http://www.education-inquiry.net/index.php/edui/article/view/24044/32748>)

Therefore, it is crucial to find a way to analyse therapisation as a site of constant negotiation and agency without an essentialist subject. This would allow for seeing that problems concerning therapisation are not objects but the products of different practices, policies and power relations and therefore always negotiable and changeable. In addition, this would hold several implications for young people’s education. Educationalists as well as young people themselves should understand the alliance of neoliberalism and therapisation, and look more closely at how they work and their consequences. Being able to challenge the ‘therapy first, education later’ orientation would also provide young people with more possibilities for various kinds of agency in society. It is possible to transcend the dualistic order of compliance versus resistance, and take up the master narratives versus resisting them. Quoting Bronwyn Davies (2005, 13): ‘it is in our own existence, the terms of our existence, that we need to begin the work, together, of decomposing those elements of our world that make us, and our students, vulnerable to the latest discourse and that inhibit conscience and limit consciousness’. Conclusion According to McLaughlin (2012, 51), many of today’s survivors need not have experienced such horrors as rape, the Holocaust or other horrors to which survival has traditionally been associated. The expansion of the survival discourse has taken place in an educational domain that is increasingly amenable to therapeutic explanations of individual and social problems. This article has argued that the therapeutic mode of personal understanding is permeating educational policies and programmes for young people. These programmes tend to categorise young adults without troubling these categorisations in any way. These categorisations that take place have consequences that result in certain outcomes which have not yet been carefully considered. A central dynamic is that young people’s lives are described in therapeutic terms. It is therefore no surprise that the term ‘survivor’ serves to endow young people with the position of a victim who has survived, and consequently this is the position from which they get heard. The discourse of survival is becoming more powerful. Within it, young people are allowed to narrate their situations and subjectivities. Consequently, the position from which they get heard is established by recognising their vulnerabilities, injuries, emotional problems including low self-esteem and stress. The idea that young people are unable to learn unless they are happy and possess confidence, self-understanding and social skills represents a clear statement of the ethos of therapeutic education: psychology first, education later (Furedi 2009, 181). Based on my analysis, young people tend to be recognised through the prism of a therapeutic mode of understanding, of inherent vulnerability and the parallel notion of a self that is damaged and fragile. The role of education in the therapeutic discourse is to help such young people cope with their difficulties in a way that is held to be empowering, a process through which they learn to deal with their emotions, which in turn leads to survival socially and, most importantly, coping in the labour market. At first glance, the neoliberal discourse involving competitiveness and the urge to succeed may seem quite different from the therapeutic discourses of self-centredness, vulnerability and survival. Yet, despite their differences, both work towards a similar objective. The therapeutic discourse offers to free young people from their psychic and emotional chains so that they may take control of themselves and their lives and become more self-disciplinary and effective in terms of labour market demands. Therapeutic solutions are consonant with the political rationales that are currently at play during this period of ‘welfare-state crisis’. Their espousal of the morality of freedom, autonomy and fulfilment provides for the mutual translatability of the languages of psychic health and individual liberty (Rose 1999, 260). It is not the aim of this article to underestimate the understandings and practices involved in working with those who have indeed been traumatised. Regarding the therapeutic discourse, there seems to be a good intention to secure equality of opportunity as a way to help people achieve more educationally and generally in their lives. However, the present article focused specifically on education that has been permeated by the therapeutic ethos where the question is not whether to intervene but which interventions are therapeutically more effective. In addition, therapisation reaches much further than this. According to Kathryn Ecclestone, it offers a new sensibility, a new cultural vocabulary as well as explanations and underlying assumptions about appropriate feelings and responses to events, and a set of associated practices through which people make sense of themselves and others (Ecclestone et al. 2009, 379). Normalising young people’s problems, traumas, policies and practices inadvertently undermines subjectivity and resilience among them. Young persons, who cannot know themselves, are not subjects but objects in the therapeutic culture. In neoliberal times, well-being needs a further deconstruction because neoliberal discourses work by disguising their real purposes. So what are the governments seeking with their language of well-being? What this paper suggests is that it provides legitimation for shaping young people and others as more economically productive subjects.