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#### Interpretation: Topical affirmatives must instrumentally defend n 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 cooperation must be governmental

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

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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.

#### They violate each of the above words’ requirements of government action.

#### A predictable limit is the only way to give the neg a chance to win---radical aff choice shifts the grounds for the debate and puts the aff far ahead. Pre-tournament negative preparation is structured around topical plans as points of offense, which means anything other than a topical plan structurally favors the affirmative.

#### First, fairness---debate requires effective competition between the aff and the neg---the only way for any benefit to be produced from debate is if the judge can make a decision between two sides who have had a relatively equal chance to prepare for a common point of debate.

#### Second, contestation---debate is unique because of the iteration of limited arguments over the course of a season that forces debaters to improve their arguments and reconsider their positions. Every debater is here for different reasons, but all those reasons rely the pedagogical uniqueness of the space and maximizing its benefits. Their topic is unilaterally declared and imprecise, which prevents iteration through shallow debates, unpredictable advocacies, and lack of testing. A topical version of the aff that criticizes corporations like Dow Chemical solves their offense.

#### Policy debates over antitrust are valuable

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IV. Antitrust in Civil Society Competition issues are also part of the general civic discourse separate from the campaign rhetoric and legislative proposals offered by politicians. This is also a significant sign that antitrust has begun to be an important source of small “p” politics that engages substantial segments of the public at large. One example is the increased number of non-technical books intended for a lay audience that deal with the role of antitrust in a healthy economy and democracy. Recent and forthcoming books dealing with these themes include Tim Wu’s “The Curse of Bigness,”109 Matt Stoller’s “Goliath,”110 Maurice Stucke and Ariel Ezrachi’s “Competition Overdose,”111 Zephyr Teachout’s “Break ‘em Up,”112 and David Dayan’s “Monopolized.”113 On the academic side, there are a plethora of government and NGO studies of competition policy on digital competition114 and new works are flourishing which explore the broader ramifications of antitrust and competition in society.115 Long form and more mass-market journalism have also taken up the mantle of exploring the role of antitrust and competition policy. Such diverse magazines as The Atlantic,116 Time, 117 New Republic,118 American Prospect,119 Rolling Stone,120 New York Times magazine,121 Variety,122 National Review, 123 Foreign Policy,124 and other policy and opinion magazines have all run recent stories or profiles of individuals involved in antitrust issues. Before the COVID-19 pandemic effectively monopolized press coverage in the United States, there were thirty-three antitrust related stories on the front page of the New York Times or the front page of its business section over a three-month period in late 2019. 125 A majority of the stories focused on tech giants such as Apple, Microsoft, Google, Amazon, and Facebook.126 In addition, the New York Times also covered stories about mergers, merger policy, local issues such as the Chicago taxi market, and various smaller industries.127 This is separate from coverage during the same period of campaign issues and candidate statements relating to the field. A similar increase in coverage during this same period can be observed anecdotally in more business-oriented publications like Forbes, Barron’s, Wired, and the Wall Street Journal; general newspapers like USA Today, Washington Post, and Huffington Post; more local newspapers; as well as radio and television.128 Web pages and social media accounts on these issues have similarly proliferated on all ideological perspectives.129 Lobbying and public policy groups are growing in number and influence. Beyond the traditional trade associations and general think tanks there are now a number of active groups with antitrust as a large part of their focus. These include the Open Markets Institute, 130 American Antitrust Institute, 131 Anti-Monopoly Fund,132 Institute for Self-Reliance,133 Public Citizen,134 Public Knowledge,135 Demos, 136 and the International Center for Law and Economics.137 At the more technical legal end of the debate, antitrust is similarly flourishing as a field. One sees increased law school hiring in the field for the first time in decades. Academic institutes and centers abound with a wide variety of perspectives ranging from libertarian to enforcement oriented.138 Most major antitrust cases now feature multiple amicus briefs from legal and economic experts on both sides of an issue both in the Supreme Court or the Courts of Appeals.139 Conclusion Antitrust has always been political in nature. Antitrust law provides broad legal commands dealing with how governments and private individuals can challenge different types of market behavior. In this way, antitrust has not changed. Antitrust will never take the place of sports, the Dow Jones index, or the weather for conversation at the breakfast table, but it has become a meaningful part of the political and policy debate for candidates, the legislature, and important segments of civil society. What has changed, however, is the degree that antitrust has reentered the political arena. Once mostly the domain of technocrats, antitrust issues have been proposed and debated by Presidential candidates, political parties, legislators, pundits, journalists, lobby groups, and voters alike. There are also a flurry of serious proposals and investigations that would make significant changes to the current system if adopted. This is all to the good. Even if none of the current proposals come to fruition, the antitrust debate is part of a broader engagement with political economy issues dealing with fundamental concerns such as economic concentration, globalization, income inequality, social and racial justice, and even recently the proper response to the COVID-19 emergency. The many proposals, initiatives, and pressure groups represent at a minimum the return of antitrust as part of the progressive agenda.

#### They can’t get offense---we don’t have the power to impose a norm, only to persuade you that their arguments should be rejected---every debate requires a winner and loser, so voting negative doesn’t reject them from debate, it just says they should make a better argument next time

Amanda Anderson 6, Andrew W. Mellon Professor of Humanities and English at Brown University, Spring 2006, “Reply to My Critic(s),” Criticism, Vol. 48, No. 2, p. 281-290

MY RECENT BOOK, The Way We Argue Now, has in a sense two theses. In the first place, the book makes the case for the importance of debate and argument to any vital democratic or pluralistic intellectual culture. This is in many ways an unexceptional position, but the premise of the book is that the claims of reasoned argument are often trumped, within the current intellectual terrain, by appeals to cultural identity and what I gather more broadly under the rubric of ethos, which includes cultural identity but also forms of ethical piety and charismatic authority. In promoting argument as a universal practice keyed to a human capacity for communicative reason, my book is a critique of relativism and identity politics, or the notion that forms of cultural authenticity or group identity have a certain unquestioned legitimacy, one that cannot or should not be subjected to the challenges of reason or principle, precisely because reason and what is often called "false universalism" are, according to this pattern of thinking, always involved in forms of exclusion, power, or domination. My book insists, by contrast, that argument is a form of respect, that the ideals of democracy, whether conceived from a nationalist or an internationalist perspective, rely fundamentally upon procedures of argumentation and debate in order to legitimate themselves and to keep their central institutions vital. And the idea that one should be protected from debate, that argument is somehow injurious to persons if it does not honor their desire to have their basic beliefs and claims and solidarities accepted without challenge, is strenuously opposed. As is the notion that any attempt to ask people to agree upon processes of reason-giving argument is somehow necessarily to impose a coercive norm, one that will disable the free expression and performance of identities, feelings, or solidarities. Disagreement is, by the terms of my book, a form of respect, not a form of disrespect. And by disagreement, I don't mean simply to say that we should expect disagreement rather than agreement, which is a frequently voiced-if misconceived-criticism of Habermas. Of course we should expect disagreement. My point is that we should focus on the moment of dissatisfaction in the face of disagreement-the internal dynamic in argument that imagines argument might be the beginning of a process of persuasion and exchange that could end in agreement (or partial agreement). For those who advocate reconciling ourselves to disagreements rather than arguing them out, by contrast, there is a complacent-and in some versions, even celebratory-attitude toward fixed disagreement. Refusing these options, I make the case for dissatisfied disagreement in the final chapter of the book and argue that people should be willing to justify their positions in dialogue with one another, especially if they hope to live together in a post-traditional pluralist society. One example of the trumping of argument by ethos is the form that was taken by the late stage of the Foucault/Habermas debate, where an appeal to ethos-specifically, an appeal to Foucault's style of ironic or negative critique, often seen as most in evidence in the interviews, where he would playfully refuse labels or evade direct answers-was used to exemplify an alternative to the forms of argument employed by Habermas and like-minded critics. (I should pause to say that I provide this example, and the framing summary of the book that surrounds it, not to take up airtime through expansive self-reference, but because neither of my respondents provided any contextualizing summary of the book's central arguments, though one certainly gets an incremental sense of the book's claims from Bruce Robbins. Because I don't assume that readers of this forum have necessarily read the book, and because I believe that it is the obligation of forum participants to provide sufficient context for their remarks, I will perform this task as economically as I can, with the recognition that it might have carried more weight if provided by a respondent rather than the author.) The Foucauldian counter-critique importantly emphasizes a relation between style and position, but it obscures (1) the importance or value of the Habermasian critique and (2) the possibility that the other side of the debate might have its own ethos to advocate, one that has precisely to do with an ethos of argument, an ideal of reciprocal debate that involves taking distance on one's pre-given forms of identity or the norms of one's community, both so as to talk across differences a

nd to articulate one's claims in relation to shared and even universal ideals. And this leads to the second thesis of the book, the insistence that an emphasis on ethos and character is interestingly present if not widely recognized in contemporary theory, and one of the ways its vitality and existential pertinence makes itself felt (even despite the occurrence of the kinds of unfair trumping moves I have mentioned). We often fail to notice this, because identity has so uniformly come to mean sociological, ascribed, or group identity-race, gender, class, nationality, ethnicity, sexuality, and so forth. Instances of the move toward character and ethos include the later Foucault (for whom ethos is a central concept), cosmopolitanism (whose aspiration it is to turn universalism into an ethos), and, more controversially, proceduralist ethics and politics (with its emphasis on sincerity and civility). Another version of this attentiveness to ethos and character appears in contemporary pragmatism, with its insistence on casualness of attitude, or insouciance in the face of contingency-recommendations that get elevated into full-fledged exemplary personae in Richard Rorty's notion of the "ironist" or Barbara Herrnstein Smiths portrait of the "postmodern skeptic." These examples-and the larger claim they support-are meant to defend theory as still living, despite the many reports of its demise, and in fact still interestingly and incessantly re-elaborating its relation to practice. This second aspect of the project is at once descriptive, motivated by the notion that characterology within theory is intrinsically interesting, and critical, in its attempt to identify how characterology can itself be used to cover or evade the claims of rational argument, as in appeals to charismatic authority or in what I identify as narrow personifications of theory (pragmatism, in its insistence on insouciance in the face of contingency, is a prime example of this second form). And as a complement to the critical agenda, there is a reconstructive agenda as well, an attempt to recuperate liberalism and proceduralism, in part by advocating the possibility, as I have suggested, of an ethos of argument. Robbins, in his extraordinarily rich and challenging response, zeroes in immediately on a crucial issue: who is to say exactly when argument is occurring or not, and what do we do when there is disagreement over the fundamentals (the primary one being over what counts as proper reasoning)? Interestingly, Robbins approaches this issue after first observing a certain tension in the book: on the one hand, The Way We Argue Now calls for dialogue, debate, argument; on the other, its project is "potentially something a bit stricter, or pushier: getting us all to agree on what should and should not count as true argument." What this point of entry into the larger issue reveals is a kind of blur that the book, I am now aware, invites. On the one hand, the book anatomizes academic debates, and in doing so is quite "debaterly" This can give the impression that what I mean by argument is a very specific form unique to disciplinary methodologies in higher education. But the book is not generally advocating a narrow practice of formal and philosophical argumentation in the culture at large, however much its author may relish adherence to the principle of non-contradiction in scholarly argument. I take pains to elaborate an ethos of argument that is linked to democratic debate and the forms of dissent that constitutional patriotism allows and even promotes. In this sense, while argument here is necessarily contextualized sociohistorically, the concept is not merely academic. It is a practice seen as integral to specific political forms and institutions in modern democracies, and to the more general activity of critique within modern societies-to the tradition of the public sphere, to speak in broad terms. Additionally, insofar as argument impels one to take distance on embedded customs, norms, and senses of given identity, it is a practice that at once acknowledges identity, the need to understand the perspectives of others, and the shared commitment to commonality and generality, to finding a way to live together under conditions of difference. More than this: the book also discusses at great length and from several different angles the issue that Robbins inexplicably claims I entirely ignore: the question of disagreement about what counts as argument. In the opening essay, "Debatable Performances," I fault the proponents of communicative ethics for not having a broader understanding of public expression, one that would include the disruptions of spectacle and performance. I return to and underscore this point in my final chapter, where I espouse a democratic politics that can embrace and accommodate a wide variety of expressions and modes. This is certainly a discussion of what counts as dialogue and hence argument in the broad sense in which I mean it, and in fact I fully acknowledge that taking distance from cultural norms and given identities can be advanced not only through critical reflection, but through ironic critique and defamiliarizing performance as well. But I do insist-and this is where I take a position on the fundamental disagreements that have arisen with respect to communicative ethics-that when they have an effect, these other dimensions of experience do not remain unreflective, and insofar as they do become reflective, they are contributing to the very form of reasoned analysis that their champions sometimes imagine they must refuse in order to liberate other modes of being (the affective, the narrative, the performative, the nonrational). If a narrative of human rights violation is persuasive in court, or in the broader cultural public sphere, it is because it draws attention to a violation of humanity that is condemned on principle; if a performance jolts people out of their normative understandings of sexuality and gender, it prompts forms of understanding that can be affirmed and communicated and also can be used to justify political positions and legislative agendas.

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CORPORATE ENFORCEMENT PIC:

#### The United States federal government should:

#### 1 ⁠— ban companies from deploying incendiary bombs

#### 2 ⁠— pass a No First Use policy

#### 3 ⁠— prohibit the use of chemical weapons

#### 3 ⁠— abolish the military

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CORPORATE ENFORCEMENT DA:

#### Antitrust law enforcement has two areas of focus now: health care and big tech. Health care is under the radar.

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Lina Khan’s Federal Trade Commission has its eyes on health care. The agency known for efforts to rein in Big Tech companies like Facebook and Amazon is also enmeshed in high-stakes health care and health tech battles that extend well beyond Silicon Valley. Case in point: The FTC trial that kicked off yesterday examining monopoly concerns in the market for cancer screening technology. (More on that below.) That closely watched antitrust case — involving the giant Illumina and startup Grail — predates Khan’s confirmation as FTC chair. But it underscores how health issues are looming over the agenda, particularly heading into the pandemic's second year. The way health care companies and consumer health apps handle sensitive data “is an area that I'm sure [Khan’s] very, very interested in,” said Jessica Rich, former director of the FTC’s consumer protection bureau, adding that the Biden administration's FTC will also be closely scrutinizing hospital mergers. “I expect her and the commission to take a very bold approach to what constitutes harm for both,” Rich said. “I expect her to pay close attention to algorithms and potential discrimination in health care, both denials and pricing issues which the FTC's laws can address.” The FTC’s jurisdiction touches nearly the entire health economy. While its competition bureau looks at health care mergers like the Illumina-Grail deal, its consumer protection side is focused on health privacy and data security issues, as well as fighting bogus medical claims on everything from weight loss to Covid cures. When Congress passed the Covid-19 Consumer Protection Act last year, the agency was granted new authority to police Covid scams. Although Khan hasn't spoken publicly about her health care agenda, she's likely to take issue with health apps and companies whose business models maximize, incentivize and monetize data collection. Of particular concern is how firms disclose what they’re doing with consumers’ data — and whether it may still be deceptive or unfair.

#### Care Work drains finite resources and are drawn from under-the-radar M and A priorities

McCabe 18, covers technology policy from The Times' Washington bureau, formerly of Axios (David, “Mergers are spiking, but antitrust cop funding isn't,” Axios, <https://www.axios.com/antitrust-doj-ftc-funding-2f69ed8c-b486-4a08-ab57-d3535ae43b52.html>)

The number of corporate mergers has jumped in recent years, but funding has stagnated for the federal agencies that are supposed to make sure the deals won’t harm consumers. Why it matters: A wave of mega-mergers touching many facets of daily life, from T-Mobile’s merger with Sprint to CVS’s purchase of Aetna, will test the Justice Department's and Federal Trade Commission’s ability to examine smaller or more novel cases, antitrust experts say. What they’re saying: “You have finite resources in terms of people power, so if you are spending all of your time litigating big mergers … there might be some investigations where decisions might have to be made about which investigations you can pursue,” said Caroline Holland, who was a senior staffer in DOJ’s Antitrust Division under President Obama and is now a Mozilla fellow. What's happening: More mergers are underway now than at any point since the recession. The total number of transactions reported to the federal government in fiscal year 2017, and not including cases given expedited approval or where the agencies couldn't legally pursue an investigation, is 82% higher than the number reported in 2010 and 55% higher than the number reported in 2012. Funding for antitrust officials who weigh the deals hasn’t kept pace. The funding for the Department of Justice’s antitrust division has fallen 10% since 2010, when adjusted for inflation. That's in line with the broader picture: not adjusting for inflation, the Department's overall budget increased just slightly in 2016 and 2017. Funding for the FTC has fallen 5% since 2010 (adjusted for inflation). An FTC spokesperson declined to comment on funding levels and Antitrust Division officials didn't provide a comment. Driving the news: Merger and acquisition activity is up 36% in the United States compared to the same time last year, according to Thomson Reuters data from April. Several deals under government review have gotten national attention, including Sinclair’s purchase of Tribune's TV stations or T-Mobile’s deal with Sprint, which stands to reduce the number of national wireless providers from four to three. Meanwhile, the Justice Department is awaiting the ruling on its lengthy legal effort to block AT&T’s proposed $85 billion purchase of Time Warner. Yes, but: It’s not the attention-grabbing mega-mergers that advocates worry will get less of a close look thanks to a shortage of funds. Instead, some say budget limitations are likely to matter when officials are deciding which smaller or "borderline" deals to investigate further. “Sometimes there’s nothing there,” said Holland of the agency's early investigations. “Other times, it might be, ‘This is kind of a close call, and we’ve got three or four close calls and we need to pick one of them.’" "It could mean settlements get accepted that otherwise wouldn’t, or deals that should be challenged aren’t," said Michael Kades of the Washington Center for Equitable Growth, an antitrust-enforcement-friendly think tank that has done extensive research on the topic, in an email.

#### Health consolidation spikes health care costs and drastically lowers quality of care---antitrust is reverse causal

Numerof 20, PhD at Bryn Mawr, internationally recognized consultant and author with over 25 years of experience in the field of strategy development and execution, business model design, and market analysis (Rita, “Covid-Induced Hospital Consolidation: What Are The Impacts On Consumers, And Potentially The President,” *Forbes*, <https://www.forbes.com/sites/ritanumerof/2020/11/11/covid-induced-hospital-consolidation-what-are-the-impacts-on-consumers-and-potentially-the-president/?sh=692d6fc94da0>)

Covid-19 has initiated yet another wave: A wave of hospital mergers and acquisitions that will have devastating consequences for public health if industry doesn’t soon execute an about-face. Whether because they’re on the brink of bankruptcy and have subscribed to the half-truth that size is protective, or because they think they can score some good deals and believe scale and success are synonymous, the financial fallout of Covid-19 has caused many hospital executives to make consolidation a core part of their future plans. With the intent of increasing care quality and decreasing consumer costs despite these challenging times, the merger between Shannon Medical Center and Community Hospital and partnership between Intermountain and Sanford Health are just two examples. There are multiple reasons why consumers absolutely cannot afford for industry to bulk up in an effort to weather this storm. The first is that the positive efforts executives claim consolidation will help them accomplish often prove to be futile. Research shows that wherever market concentration is high, there are also higher prices for both consumers and the employers who provide their healthcare coverage. In the absence of competition, costs increase and quality deteriorates. That’s the opposite of progress. Second, generally speaking, the union of two institutions with operational shortcomings only creates one larger institution with even more operational shortcomings! That’s not progress either. Third, Covid-induced consolidation will only make future progress many times more difficult. The larger an organization is, the more it will struggle to rapidly adapt to healthcare disruptions like we’re seeing today. Retail giants like Walmart, Walgreens, Amazon and CVS are pivoting to cater to healthcare consumer demands for affordability and accessibility. Right now, they’re still a blip on the radar relative to mainstream healthcare delivery, but they are looking to eventually corner the market and drive the industry forward. And as they continue down this path, consolidated healthcare systems will be left behind, potentially at the expense of the consumers in that area. The potential impact of continued consolidation on rural patients is especially concerning. Rural communities may have a limited number of the big-box retailers mentioned above. And the unfortunate fact of the matter is that when a larger hospital or health system purchases a smaller, rural hospital, it’s usually only a matter of time before the purchasing system realizes that unless they drastically pare down and reconfigure operations, the acquired hospital will never be profitable. Many eventually decide to close up shop, in some instances reducing or even eliminating rural patients’ options for care delivery. In the absolute worst-case scenario, this is exactly the reality all consumers could face if consolidation continues at its current pace. In theory and if left unchecked, all of the hospitals in the United States could be owned by only a handful of mammoth systems that then lack incentive to continually deliver quality services at lower total cost of care.

#### Health care antitrust is a premier vehicle for social change and solves the disproportionate racial impact of rising health costs.

Kritter 21, University of California, Berkeley, School of Law, (Dani, March 2021, “Antitrust as Antiracist”, <https://www.californialawreview.org/antitrust-as-antiracist/>)

The [federal antitrust laws](https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws)—three statutes enacted over a century ago—are in the spotlight. The year 2020 brought a [new reckoning with corporate power](https://www.theguardian.com/technology/2020/dec/18/google-facebook-antitrust-lawsuits-big-tech) and a [resurgent interest in using antitrust law](https://newrepublic.com/article/160646/biden-antitrust-blueprint-monopoly-busting) as a force for populist change. The “hipster antitrust” movement argues that the focus of antitrust policy should not be limited to market power and consumer welfare. Rather, antitrust can and should be a remedy for a suite of societal ills, from workers’ rights to campaign finance and income inequality. The year 2020 also marked an awakening to [racial injustice](https://news.berkeley.edu/2020/09/22/racial-justice-in-america-a-deeper-look/) in America. The deaths of George Floyd, Breonna Taylor, and Ahmaud Arbery sparked nationwide outrage and demands to reform institutions built on systemic racism. Yet the recent plans for [antitrust reform](https://www.jdsupra.com/legalnews/117th-congress-takes-early-steps-6904745/)—which primarily focus on monopolies in tech—ignore the fact that the antitrust status quo perpetuates [racial injustice](https://theappeal.org/how-antitrust-perpetuates-structural-racism/). But it doesn’t have to be this way. This blog identifies consolidation in healthcare and vertical restraints in franchising as two examples of how lax antitrust enforcement has disproportionately harmed people of color. It also argues that by dusting off existing antitrust tools, antitrust enforcement can be [antiracist](https://nmaahc.si.edu/learn/talking-about-race/topics/being-antiracist).

Background: The Antitrust Toolbox

Congress enacted the federal antitrust laws to check the power of massive corporations run amuck. These laws—the Sherman Act, the Federal Trade Commission (FTC) Act, and the Clayton Act—were originally designed to control corporate power, protect individual economic freedom, and ensure a fair and equal society. But beginning in the 1970s when Robert Bork published the still-influential “[Antitrust Paradox](https://www.washingtonpost.com/news/wonk/wp/2012/12/20/antitrust-was-defined-by-robert-bork-i-cannot-overstate-his-influence/),” courts slowly narrowed the focus of antitrust law to protecting consumer welfare. Today, antitrust enforcement prioritizes preventing the anticompetitive acquisition, exercise, or maintenance of market power that threatens consumer welfare and competition—a much narrower goal than its populist origins.

Dusting Off the Tools

Recent years have seen [bipartisan](https://www.axios.com/exclusive-poll-shows-bipartisan-support-for-tech-antitrust-action-c3794ff5-120d-44d8-bac1-58b033efbd8a.html) interest in reining in powerful corporations with more aggressive antitrust enforcement. One of the few agency voices calling for an antiracist approach to antitrust is Rebecca Slaughter, the acting chair of the FTC. Slaughter [has recently spoken out](https://www.ftc.gov/system/files/documents/public_statements/1583714/slaughter_remarks_at_gcr_interactive_women_in_antitrust.pdf) about using antitrust enforcement to “right the wrongs of systemic racism.” She challenges what she views to be a faulty premise of antitrust law: “that antitrust can and should be value-neutral, and therefore social justice problems like racism do not have a role in antitrust enforcement.” Slaughter argues that antitrust has never been and never will be value-neutral. Antitrust addresses market structures, and racism is entrenched in the historic and current market structures in the United States. When agencies make decisions about how to deploy antitrust tools, they can choose whether to reinforce these structural inequities or to dismantle them. Healthcare and franchising are two examples of how a shift in antitrust enforcement from “value-neutral” to antiracist can break down market structures that perpetuate racial injustice.

Honing in on Healthcare Monopolies

Consolidation in the healthcare industry is a driving force behind the sky-high cost of medical care and pharmaceutical drugs. Due to a wave of healthcare mergers, most hospital markets in the United States are dominated by a single corporate entity. The lack of competition means the dominant hospital is free to exercise market power by raising prices and restricting output. [Recent studies](https://www.nytimes.com/2020/09/18/health/covid-hospitals-medicare-rates.html) of prices for hospital and outpatient treatment report that healthcare mergers have resulted in large networks charging private insurers 2.5 to 3 times more than Medicare rates for the same patient care. These rising costs lead to higher insurance premiums paid by employers and individuals. Artificially inflated healthcare costs disproportionately burden people of color and create a barrier to accessing quality care. Black families spend a greater share of their household income on health care premiums and out-of-pocket costs than the average American family. And of the thirty million [uninsured](https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/02/19/there-are-clear-race-based-inequalities-in-health-insurance-and-health-outcomes/) individuals in the United States, half are people of color. The [COVID-19 pandemic](https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/index.html) has put this health inequity in sharp focus: racial and ethnic minority groups are more likely to contract the virus, get severely ill, and die from coronavirus infections. What can antitrust do? First, antitrust merger review can be antiracist. Mergers between competitors are scrutinized under Section 7 of the Clayton Act, which prohibits mergers that may substantially lessen competition or create a monopoly. When determining whether a merger lessens competition, the FTC, Department of Justice (DOJ), and courts consider the likelihood of anticompetitive effects. An antiracist application of the Clayton Act would consider racially disparate outcomes like health care costs, insurance premiums, and the quality of care provided as anticompetitive effects. Business practices that perpetuate systemic racism are anticompetitive because they exclude people of color from full participation in the market. And this exclusion is expensive: a study by Citigroup estimates that discrimination cost the U.S. economy [$16 trillion](https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/09/23/916022472/cost-of-racism-u-s-economy-lost-16-trillion-because-of-discrimination-bank-says) since 2000. Moreover, there is precedent for applying a broad conception of anticompetitive effects in merger review. In [Brown Shoe Co. Inc. v. United States](https://www.nytimes.com/2019/06/20/technology/tech-giants-antitrust-law.html), the Supreme Court held that a meager 7.2 percent combined market share of two merging shoe manufacturers was unhealthy market concentration under the Clayton Act. Chief Justice Earl Warren acknowledged that concentration in the shoe industry might offer some efficiencies and lower prices for consumers, but “the protection of viable, small, locally owned businesses” was a priority. Therefore, agencies can and should argue that mergers that reinforce racial inequity substantially lessen competition. Second, antitrust enforcement actions can hone in on industries like healthcare where the anticompetitive effects are acutely felt by people of color. As California attorney general from 2011 to 2017, [Vice President Kamala Harris](https://www.nytimes.com/2020/10/06/health/kamala-harris-health-care.html) prioritized taking on healthcare prices through antitrust. Her investigation laid the groundwork for California’s suit against [Sutter Health](https://www.nytimes.com/2019/10/03/health/sutter-hospitals-medical-bills.html) for using its market power to raise prices and extort better deals from insurers, which resulted in a $575 million settlement. The DOJ and FTC should follow in California and Vice President Harris’s footsteps and crack down on healthcare, utilizing an antiracist approach.

## Case

### 1NC

#### 1 ⁠— Vote neg on presumption:

#### A ⁠— double-turn ⁠— Kim Phuc didn’t consent, which means they link to their K of deploying disabled folk as iconography

#### B ⁠— no spill-out ⁠— no explanation about how the aff influences US imperialism, capitalism, OR changes practices regarding disability

#### C ⁠— Individual strategies fail to influence the world

Reed 16, Prof. of Political Science at Penn (Adolph Reed Jr., 2016, “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

#### 2 ⁠— State engagement is crucial for disability reform

Zaikowski 16, author of the novels In a Dream, I Dance by Myself, and I Collapse (Civil Coping Mechanisms, 2016), her fiction and poetry, as well as her essays on language, human rights, and animal rights, have been published widely, MFA in Creative Writing from Naropa University's Jack Kerouac School of Disembodied Poetics, studied psychological trauma and its impact on language (Carolyn Zaikowski, 11-28-2016, “Disabled People Will Die Under Trump: An Emergency Plea To Allies,” Huffington Post, <http://www.huffingtonpost.com/entry/disabled-people-will-die-under-trump-an-emergency_us_583cbed4e4b04e28cf5b8a9b>)

This is an emergency plea to those upset about a pending Trump presidency. I’d like to especially address intersectional feminists, radicals, anarchists, socialists and others in the USA who are able-bodied and drawn towards systems-level analysis and organizing for radical change. People with disabilities and chronic illnesses will die under a Trump presidency. Full stop. We will die because of him. This is an emergency situation and we need emergency solidarity, immediately, from every single one of you. Right now, many of us feel like you do not understand the horror of this situation. Social justice activists, why is ableism so often relegated to the periphery of your analysis? Many disabled people feel right now that they desperately need you and can’t find you. Maybe it’s the cultural lineage of eugenics and Social Darwinism which has created an ableist norm, a veil of neutrality over what is actually a system of domination. Maybe it has to do with an association between disability awareness campaigns and a vague sense of apolitical softness or even conservatism, as if caring about disability is not the job of radicals, but the job of celebrity doctors, colored ribbon campaigns, and concerned suburban moms. Or maybe it has something to do with a sense of not being personally affected by disability. You shouldn’t have to be personally affected by something to care about it, but if helps, here’s a reminder: Every single one of you could become disabled or chronically ill at the drop of a hat, and you’re going to be living under Trump, too. Donald Trump, in addition to being one of the most racist, sexist, xenophobic, homophobic, transphobic, Islamophobic, anti-Semitic, classist, capitalist, all-around hateful and terrifying U.S. presidents in history, is also on track to be the most ableist president. His oft-stated goal of virtually dismantling Medicaid and Obamacare is perhaps the most brazen way in which he will boot-stomp and kill disabled and sick folks. (And this is not to mention other health care-related questions: What is going to happen to reproductive rights? What is going to happen to transfolk who use hormones?) But Trump’s nasty ableist ideology doesn’t end at health care. Trump has contributed to an ableist cultural psychology by openly mocking disabled people and he has been charged with consistent ADA violations in his business ventures. This includes cases so egregious that the Department of Justice had to get involved . Trump believes capitalists are “oppressed” by the imposition of the Americans with Disabilities Act and has repeatedly spoken of supporting legislation that would seriously limit the seminal act’s powers. Immediately addressing this emergency also requires immediately addressing ableism’s intersection with other oppressive systems. For example, black folks are 2.5 times more likely to be killed by police than whites and a full half of people killed by police are disabled. This means that Trump’s potential Department of Justice policies, which will leave police even more unaccountable and militarized than already are, will have drastic effects on disabled people in general, and disabled people of color in particular. Indeed, the disabled people who are most at risk for harm and death will be those already suffering other injustices. Many will be people of color and women who are already discriminated against in emergency rooms. Many will be immigrants and migrant workers. Many will be single mothers. Many will be LGBTQ folks. Many will be people who do not speak English, the US’s dominant language. Many will be Native Americans. Many will be severely disabled people needing total care and living in group homes, which are at risk of losing funding. Many will be disabled children in underfunded schools who risk losing their already minimal accommodations. Many will be people who are isolated, without friends or family. Almost all will be working class and poor. I care about the difference between radical and liberal U.S. politics, between politics as usual and actual systemic change. I care about the similarities between Republicans and Democrats and how capitalism, imperialism, sexism, racism, police states, and war have been fostered by both parties. I was even stubborn about supporting Bernie, a lesser of three evils candidate whose seriously problematic pro-war voting record left me deeply conflicted. But there is nothing more privileged than being able to comfortably intellectualize and debate about a Utopian future without having to worry about your physical or emotional survival in the present. Without having to wade through the resultant muck after systems of oppression pit your survival against your ethical purity. This is the first time in my life I have not voted third party. Significantly reduced risk to disabled people in the United States is but one way in which a Clinton presidency would have had immediate, physical, survival-level differences from a Trump one. And always, always, always the complications of ableism get exacerbated by elements like gender, race, class, immigration status, being a member of a persecuted religion, age, veteran status, and being LGBTQ. With Clinton and all of her profound flaws, we could have at least maintained a status quo and kept fighting from there. We could have at least minimized deaths of, and harm against, disabled people. Now we’re moving backwards and many disabled people are going to die. Full stop. So here we are. We have elected a textbook authoritarian. We are in uncharted waters, even for the USA. And right now, more than ever, if you are an ally, then you need to say the word “ableism.” Look at the reality of what Trump might do and say “that is ableist and horrifying.” Say “ableism” in the lists of oppressive “isms” you’ve been making lately in your articles, Tweets, posts, lesson plans, protest signs, and conversations. Look at the terrifying history of what other authoritarians have done to disabled people, then say “ableism” loudly, forcefully, whenever necessary, and mean it with all of your heart and mind. If you want to be an ally, if you want to stand in solidarity in any manner that could be considered feminist, intersectional, radical, or otherwise enlightened, it is required that you develop a sense of passionate injustice about ableism. Able-bodied people, I don’t know how to say it more clearly. This is a literal emergency, as in: Actual emergency rooms will be overflowing. As in: Death and levels of physical and psychological suffering you cannot comprehend. As in: Disabled people don’t historically fare well under authoritarian governments. You need to use whatever platforms you can access to raise awareness, organize, and make constant connections between ableism and its intersections with other injustices and political cruelties. If you have money, you need to donate to disability rights organizations, as well as organizations like the ACLU and Planned Parenthood. You need to write these articles so disabled and sick people don’t have to. You need to learn about issues like rampant physical, sexual, emotional, and economic abuse of disabled people. None of us can be free until all of us are free. So say “ableism” and mean it. We really, really need you. You need to learn about things like invisible disabilities, the obstacles that keep disabled folks from voting, the internalized ableism that makes disabled people hate themselves, and disabled people’s remarkable resistance movements. You need to teach yourself and others about the horrifying history, both in the U.S. and abroad, of human societies’ various attempts to kill and stomp disabled people into the ground. You need to do all kinds of things I can’t think of right now because I have Ehlers-Danlos Syndrome and PTSD and the stress of this election is making me physically ill. The bottom line: You need to act and be sneaky and crafty and smart and do the work. None of us can be free until all of us are free. So say “ableism” and mean it. We really, really need you.

#### Debating about specific policy options is the only way to meaningfully shift public policy for persons with disabilities ⁠— the aff merely points out causes of oppression without focusing on the details of potential policy responses

Samaha 7, Assistant Professor, The University of Chicago Law School (Adam M. Samaha, Fall 2007, “What Good Is the Social Model of Disability?,” University of Chicago Law Review, Fall, 2007, 74 U. Chi. L. Rev. 1251)

Each of these developments has a connection to public policy. Technological innovation and utilization can be demanded, subsidized, discouraged, or outlawed by the state. The same is true of sorting and ASL training. To date, U.S. policy has been relatively decentralized. Neither cochlear implants nor genetic screening is mandated or heavily regulated in terms of the reasons for use. Gallaudet was chartered by the federal government and state law imposes some restrictions on the creation of new municipalities, yet these sorting efforts are largely the product of private choices. With strong enough justifications and political forces, public policy might shift. Society might begin to treat genetic screening and cochlear implants as morally questionable and unjustifiably stigmatizing for the current generation of deaf people, or [\*1275] it might invest more resources in nonverbal communication methods including ASL, or it might heavily subsidize signing communities. Moving policy in the opposite direction is equally possible in theoretical terms. A collective decision might be made to hasten the elimination of deafness-related genes, or to mainstream all deaf people and discourage ASL as inappropriately separatist. The question is whether the social model can underwrite any policy, in any direction. The answer is no: the model suggests causes of disadvantage, but what we do about it is a matter of contested norms. Opposition to social restructuring as a remedy for disability need not be the product of ignorance, insensitivity, false consciousness, or political immorality. It might be an understandable reaction within a coherent normative framework. There just is no necessary connection between causes of harm (or disadvantage) and remedies for harm (or disadvantage). This simple point can be confirmed by comparing similar situations in which an individual is not the sole cause of his or her disadvantage, and yet it is at least debatable (1) whether any remedy is justified or (2) which remedy is proper. Consider the following statements. Your inability to get through this door is caused by the confluence of more than one factor: 1. You murdered your husband to collect insurance proceeds, and because of that we prosecuted, convicted, and imprisoned you. 2. Your skin is relatively dark, our customers prefer to interact with pink-skinned people, and so we did not hire you. 3. You are Catholic, we hate Catholics, and so we did not hire you. 4. You became wheelchair-bound after negligently driving a motorcycle, and we built this building with stairs leading to the entrance. 5. Your genes do not allow you to walk, your parents did not genetically screen for such embryos, you now use a wheelchair, and we built this building with stairs leading to the entrance. Each of these statements has a similar logical structure, and that structure mimics the social model of disability. Choices or practices of the broader society are disadvantaging the subject of the statements. But we can be confident that almost no one will demand social change and liberation of the subject in all of the above examples. Take statement 1. The subject is deprived of liberty by a physical barrier (her cell door) not only because of her decision to kill her husband (we might say she has the trait of spouse killer), but also because institutional forces responded in a particular way (officers of the state engaged in apprehension, prosecution, imprisonment). They need not [\*1276] have been designed to respond that way or exercised their powers in this case. But they were and they did. Very few observers will object to the social response. Assuming accurate adjudication of guilt, no affirmative defense, defensible sentencing, and so on, no plausible normative theory dictates any liberating remedy for the killer. Statements 2 and 3 prompt different normative reactions. Like statement 1, these situations involve a subject who suffers on account of a social or institutional reaction to an individual trait. There is nothing natural and immutable about pinker skinned people preferring not to interact with darker skinned people, or non-Catholics hating Catholics -- it might not have been a foreordained biological or social development that the pink/dark skin or Catholic/non-Catholic distinctions came about, or that given the distinction people would have the opportunity to interact across those categories. In any event, statements 2 and 3 involve animus or irrational distinctions between people. Statement 2 describes a business decision that is derivative of indefensible social preferences, but the engine of discrimination in those statements is basically the same. If we agree that the traits of skin color and Catholicism are unjustifiable bases for economic outcomes, and that social or institutional practices should be changed rather than those who suffer from the practices, a particular remedy must be selected. And there is room for debate. One might prefer antidiscrimination regulation and litigation over subsidies and public education campaigns (or vice versa), or one might hope that marketplace competition will take care of the problem. But we should perceive a structural similarity among statements 1, 2, and 3 without making anything like the same normative commitment to remedy the identified disadvantages. At a minimum it should be accepted that a normative framework is mediating a logical gap between causes of disadvantage and the appropriate response. Finally, consider statements 4 and 5. They are variations on the example nearly always used to illustrate the social model. Here the disadvantage involves a trait that impairs the ability to move by walking in conjunction with the architectural preference of others for stairs. By now, the setup has a familiar form. It is possible to draw a normative distinction between the two statements. One might believe the subject in statement 4 is morally responsible for his impairment, or that society should be careful about awarding remedies where it might reduce incentives to be careful. Either position militates against a legal remedy without necessarily deciding the outcome in statement 5. That situation effectively removes responsibility for the relevant impairment from the subject, while highlighting the possibility that third parties (here, the parents) could have taken steps to prevent producing a child with the impairment. Perhaps that fact will influence the [\*1277] choice between reconstructing the environment we have been left with and engineering the human beings we create. Even if the parents' opportunity is irrelevant to the policy response, there is still the issue of cost. Is it justifiable to retrofit the building in light of scarce resources and other needs? Should obligations of social restructuring only apply going forward? What is the correct timeframe within which to answer these questions? This choice might be much more difficult than the issue of murder for cash in statement 1; but there is a choice to be made, and it is irreducibly normative in a way that cannot be solved by enhancing the accuracy of our causation portrait. All of this applies to the Deaf culture controversies. At least part of any disadvantage associated with deafness fits the social model. Lack of hearing can be inhibiting when others communicate with the spoken word. More than one response to this situation is possible: one might decide that no response is appropriate considering resource constraints, or that deaf people should have subsidized access to cochlear implants, or that genetic screening should be used to minimize the number of deaf people, or that ASL instruction should be expanded, or that deaf people should have greater opportunities to sort themselves into sign language communities -- or the opposite of any of these responses. To be sure, our country has progressed to the point where few if any will attempt to justify treating physically or mentally impaired individuals like the killer in statement 1. It is no longer so impolite to be impaired. n90 And forced segregation is less popular in the U.S. today, n91 let alone coerced sterilization. n92 But the recognition of multiple causal factors in the generation of disadvantage is not an answer to the question, "what do we do now?"

#### A focus on epistemology is infinitely regressive and prevents reorientation towards a democratic community; pragmatism is a prerequisite to an effective politics of difference

Danforth 6, (Scot Danforth, 11-1-2006, “From Epistemology to Democracy: Pragmatism and the Reorientation of Disability Research,” Sage Journals, pp. 338-339)

Pressing the argument a step further, it is possible that new opportunities for special educators would arise only after the field sets aside the traditional search for an epistemological foundation. It may be that dropping the need for an epistemological foundation will allow special educators to focus on creating community and building solidarity across lines of disability and difference. Our identification with our community—our society, our political tradition, our intellectual heritage—is heightened when we see this community as ours rather than Nature’s, shaped rather than found. . . . In the end what matters is our loyalty to other human beings clinging together against the dark, not our hope of getting things right. (Rorty, 1982, p. 166) Losing our epistemology, so to speak, could open doors for a reorientation of the field away from philosophical foundations and toward democratic community—away from an obsession with being right and toward the social hope of being together. In this article, the American philosophy called pragmatism is offered as a way for special educators to constructively evade the thorny epistemological question in order to simultaneously seek ends that are both practical and democratic. Guided by pragmatism, special educators can eschew epistemological quagmires in favor of seeking practical solutions to problems confronting students, families, teachers, and schools. Armed with diligence, hope, and thoughtfulness, pragmatic special educators can work to create inclusive democratic communities of equality and respect. Drawing from pragmatism, this article traces an initial, constructive reorientation of the field of special education away from the impractical quest for philosophical bedrock and toward the ambitious challenge of creating liberal democratic communities. This article concludes with a series of concrete proposals for the field of disability research in light of this reorientation. These limited proposals do not exhaust the possibilities of pragmatism or democratic experimentation. They are offered in the spirit of encouraging a diverse, ongoing conversation about how educators might create communities that are more democratic and supportive to all persons without reliance on an epistemological anchor. With great frequency and passion, special education researchers have returned to the same philosophical conundrum. Over the past 3 decades, special education researchers have supplied a steady stream of arguments supporting a variety of philosophies of social inquiry (Danforth, 2001; Forness & Kavale, 1987; Gallagher, 1998; Gerber, 2001; Greenwood, 2001; Heward, 2003; Heshusius, 1982, 1984, 1988, 1989; Iano, 1986, 1987; Kauffman, 1999, 2002; Kavale & Mostert, 2003; Mostert & Kavale, 2001; Poplin, 1987, 1988; Sasso, 2001). Researchers have returned time and again to debate philosophy of inquiry issues in the pages of disability research journals, repeatedly seeking to provide a firm philosophical foundation for special education research. The fundamental problem in these many discussions concerns epistemology. Paul (2005, p. 329) defined epistemology as the theory of knowledge, or the study of the nature of knowledge. Important questions focus on the nature of knowledge; the place of experience in generating knowledge and the place of reason in doing so; relationships between knowledge and certainty and between knowledge and error; and the changing forms of knowledge that arise from new conceptualizations of the world. Guba (1990) described three primary epistemological positions (paradigms, in Kuhnian terms) in educational research: postpositivism, critical theory, and constructivism. Paul (2005) went much further, detailing nine different perspectives on social research, each asserting and putting into practice a different theory of knowledge. The many philosophical positions proposed by disability researchers address the central epistemological question, “What counts as knowledge?” This epistemological question matters deeply in terms of the kinds of research and scholarship produced and valued—or not produced and not valued— in the special education field. For example, epistemological positions taken by research journal editors and grant funding agencies have a profound influence on the nature of special education knowledge, the social purposes of the profession, the accepted theories of disability, and the promulgated practices used by teachers. In recent years, editors at one research journal have claimed positivism as the official epistemological posture of the journal (Kauffman & Brigham, 1999). Likewise, the U. S. Department of Education in the current Bush administration has taken a “hard science” stance on what counts as knowledge, calling for experimental designs that are more common to medical research than to educational inquiry. In sharp contrast, another journal editor made a public declaration of multiparadigmatic pluralism—an acceptance of research operating from many theories of knowledge (Taylor, 2001). Each of these philosophical stances matters in terms of determining what forms of scholarship are elevated and privileged and what genres are silenced and ignored. The 3 decades of epistemological debates among disability researchers have been both beneficial and redundant. On the beneficial side, frank discussions marked by openness and candor have placed important issues, tensions, and disagreements on the table for all to consider. Researchers and practitioners alike have been able to learn much about the values and beliefs that unite and divide the field, hopefully facilitating thoughtful discussions at many levels about the purposes of special education research and practice. Paul (2002) stated that special educators should spend more time and effort becoming educated about and discussing philosophy of inquiry issues in order to better comprehend the meaning of changes in social inquiry in the past 30 years. Yet the persistent goal of securing a bedrock philosophical foundation for special education knowledge has remained unfulfilled. Redundancy within the epistemological debate has become evident as these published discussions have failed to forge a philosophical consensus—failed to produce a superior epistemology for the field. The pattern of epistemological debate in the special education field bears similarity to the tired redundancy of watching what Dewey (1969) once called “the weary treadmill which [philosophers] pursue between sensation and thought, subject and object, mind and matter” (p. 6). The treadmill runs repetitiously onward, spinning out theories of knowledge with no satisfactory resolution. The epistemologist’s problem is, indeed, usually put as the question of how the subject can so far “transcend” itself as to get valid assurance of the objective world. . . . The entire epistemological industry is one—shall I say it—of a Sisyphean nature. (Dewey, 1976, p. 122) Like tortured Sisyphus pushing rocks up the hill, each epistemological articulation tries to resolve the knowledge question by championing a supposedly superior theory of knowledge—a more logically argued and rationally conceived definition of what kind of knowledge should be produced and privileged within the field. Like the great philosophers Descartes, Hume, and Kant, special education researchers are unable to master the epistemological question once and for all.

#### Ableism shouldn’t be deployed to prevent solutions to otherwise inevitable violence; the opportunity cost to their method is pragmatic political solutions

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CDS does not engage with ethical issues to do with the role of impairment and disability in people’s well-being and the pragmatic and mundane issues of day-today living. Imagine, for example, a pregnant woman who has agreed, possibly with very little thought, to the routine of prenatal diagnostics, and who has been informed that the foetus she is carrying has Tay-Sachs disease. She now has to make the decision over whether to terminate the pregnancy or carry it to term. The value judgements that surround Tay-Sachs include the fact that it will cause pain and suffering to the child and he or she will probably die before the age of four. These are morally relevant considerations to the mother. Whilst CDS would probably guide her to confront ableist assumptions and challenge ~~her~~ beliefs about the condition, considerations having to do with pain and suffering are nevertheless morally significant. The way people see things, and the language that is used to describe certain conditions, can affect how they react to them, but freeing oneself from ableist assumptions may not in some cases be enough. There may be insurmountable realities attached to some impairments where parents feel that their personal and social circumstances would not enable them to provide the child or themselves with a satisfactory life (Vehmas 2003). Impairment sometimes produces practical, difficult ethical choices and we need more concrete viewpoints than the ideas provided through ableism, which offers very little practical moral guidance. It is questionable whether the notion of ableism would help the parents in deciding whether to have a child who has a degenerative condition that results in early death. Campbell (2009a, 39, 149 and 159), for example, discusses arguments about impairments as harmful conditions, the ethics of external bodily transplants as well as wrongful birth and life court cases (whether life with an impairment is preferable to non-existence), and how ableism impacts on discourse around these issues. Whilst her analysis of such ableist discourses suggests ethical judgements, she provides no arguments or conclusions as to whether, for example, external bodily transplants are ethically wrong or whether impairment may or may not constitute a moral harm. Under the anti-dualistic stance adopted by CDS, even the well-being/ill-being dualism becomes an arbitrary and nonsensical construct. Under ableism it can be constructed as merely maintaining the dominance of those seemingly faring well (supposedly, ‘non-disabled’ people), and labels those faring less well as having lesser value. There may not be a clear answer to what constitutes human well-being or flourishing, but in general we can and we need to agree about some necessary elements required for well-being. Also, as moral agents we have an obligation to make judgements about people’s well-being and act in ways that their well-being is enhanced (Eshleman 2009). This is why we have, for example, coronary heart disease prevention programmes because the possible death or associated health problems are seen as harms. Possibly these policies are based on ableist perspective, but if that is the case then the normative use of ableism is null; eradicating supposedly ableist enterprises such as coronary heart disease prevention would be an example of reductio ad absurdum. Denying some aspects of well-being are so clear that their denial would be absurd, and simply morally wrong. CDS raises ethical issues and insinuates normative judgements but does not provide supporting ethical arguments. This is a way of shirking from intellectual and ethical responsibility to provide sound arguments and conceptual tools for ethical decision-making that would benefit disabled people. If we are to describe disability, disablism, and oppression properly, we have to explicate the moral and political wrong related to these phenomena. Whilst CDS has produced useful analyses, for example, of the cultural reproduction of disability, it needs to engage more closely with the evaluative issues inherently related to disability. As Sayer has argued (against Foucault): while one could hardly disagree that we should seek to uncover the hidden and unconsidered ideas on which practices are based, I would argue that critique is indeed exactly about identifying what things ‘are not right as they are’, and why. (Sayer 2011, 244) By settling almost exclusively to analyses of ableism without engaging properly with the ethical issues involved, CDS analyses are deficient. The moral wrongs related to disablism or ableism are matters of great concern to disabled people, and CDS should in its own part take the responsibility of remedying current wrongs disabled people suffer from.

#### Even if political liberalism currently excludes the disabled, discussing questions of implementation can revise it and bailing on it is worse

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I argue that any proposal abandoning the language of political justice would not seem to do enough for those individuals with disabilities who fall outside the basic idea of persons as depicted by Rawls. In fact, the intuitions supporting the idea that concepts like rights and opportunities are indispensable are very strong.11 Let us go back to the examples of individuals falling outside Rawls’s idea of persons because their disabilities prevent them from being a net beneﬁt to social cooperation. They are individuals who need multiple carers to work, or whose disabilities prevent them from providing a beneﬁt to social cooperation that is large enough. To put the point more sharply, it is worth noticing that the disabilities in question are compatible with being in full possession of one’s logical and moral powers. Now, should we accept that those individuals ought to be given no rights or opportunities? An afﬁrmative answer would strike us as implausible, and for a good reason. In a liberal society, having one’s rights, opportunities and basic distributive entitlements acknowledged is one and the same as being recognized as an equal. And what is missing from Rawls’s political liberalism is precisely the idea that falling below a threshold of full cooperation should not be enough to prevent the disabled from being regarded as persons on an equal footing with anyone else. In sum, Rawls’s political liberalism is not amenable to any extension that, keeping the basic ideas of society and persons intact, is able to include a concern with the status of individuals with disabilities. In addition, the proposal that the interests of the disabled are not for public reason to protect is not satisfactory. Consequently, a substantial revision is the only way to reconcile political liberalism with our intuitions concerning what is due to the disabled.

5. Revising political liberalism I: beyond Hartley’s contractualism The aim of this section and the next is to propose a substantial revision of Rawls’s theory that accommodates the justice claims of the disabled while upholding the project of political liberalism. A question that needs to be answered at this point is: why should we uphold the project of political liberalism, rather than endorsing a different model that more neatly ﬁts with our intuitions concerning what is due to the disabled? First, the general project of political liberalism is compelling. Rawls’s political liberalism aims to identify a common ground of political ideas that can work as the basis on which the most important political decisions should be made. This project is of the greatest importance because, if successful, it creates legitimacy by building institutions on the basis of concepts that are acceptable to each reasonable individual. Moreover, it promotes stability in societies that are characterized by deep pluralism. Second, despite Rawls’s failure to take the interests of the disabled into consideration,

political liberalism is well suited to support the justice claims of individuals with disabilities. This is because the idea that the disabled are citizens who deserve our respect is part of the common culture of our societies. In other words, there is an overlapping consensus on the idea that rights, opportunities and distributive shares must be granted to individuals who are not fully cooperating members of society, including those who fall below full moral powers. It is widely believed that those with physical disabilities should have the same rights as their fellow citizens, live in a social environment that does not excessively limit their opportunities and receive beneﬁts that help meet their special needs. Besides, although the state or third parties are given exceptional rights to interfere with the autonomy of individuals with severe cognitive disabilities, it is widely recognized that the mentally disabled are citizens whose basic interests must be protected by the law.12 In the public space, any proposal that individuals who are not fully cooperating members of society should have their basic interests neglected would be widely received with outrage. Such proposal would be said to ﬁt a fascist society, not a decent one. Among other legal documents, the United Nations Convention on the Rights of Persons with Disabilities (UN General Assembly, A/61/611) can be taken as the epitome of this widespread attitude. Adopted in 2006, the Convention requires that all individuals with disabilities should share in the enjoyment of equal fundamental rights.

#### 3 ⁠— Presuming an antagonistic relationship between disability and humanism is mutually exclusive with a more ambivalent understanding of the human that recognizes its potential positives ⁠— even if humanism has historically excluded disability, discarding it is net more violent

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There are times when it is essential to embrace the able or the normal. After all, like them or loathe them, these phenomena undergird the language of citizenship, law and humanity. We also recognise an imperative to ‘dis’ ability. To ‘dis’ is a slang term from African-American culture: to put down, fail to show respect, abuse and disparage. At times, we will ‘dis’ the normal (necessarily refusing to show the normal the respect it expects), while, at times, respecting the normal (when one thinks, for example, about normative notions of human rights, morality and universal notions of basic respect of the human). The prefix dis indicates negation, lack or deprivation: to deprive something of its power. We feel this when we disagree. To negate is to nullify, invalidate, render null and void, make invalid, neutralise, cancel out, undo, reverse, revoke, rescind, abrogate, overrule, over turn, avoid and retract. To dis is to trouble. There is no doubt, whether or not we like it, that the dis/ability complex does some troubling work to the register of the normal and the condition of the human. This is hardly surprising when, paraphrasing Tanya Titchkosky (2012), making lives on the edges of humanity takes some guile and creativity. A dis/human position means that we recognise the norm, the pragmatic and political value of claiming the norm, but we always seek to trouble the norm. Becoming dis/human does not offer a prescriptive opposite to the conception of the norm, rather it works away at a norm that is always, and only can be, in flux. Disabled and human are, we suggest, too often set up as opposites, as the antithesis of one another. However, following Puar (2012, p. 50), we argue that they need not be oppositional but, rather, viewed as frictional: rubbing up against one another in interesting, dare we say, desirable ways. In thinking about our recent work with disabled people, their families and their allies, we have come to think of dis/ability studies as having a number of bifurcated complexes (Table 1). Our thinking is still in the early stages of germination in relation to this list of dis/ human concepts. This paper allows us to start pulling apart, interrogating and testing out the conceptual clarity and utility of these ideas. We want to ask what disability does to typical, common-sense normative human categories of adult, youth and family. How might disability affirm some of the ways in which these categories are lived out whilst, simultaneously, demanding new ways of living (dis/life)? When we think of the goals of capitalism, science, medicine and citizenship, what assumptions are these huge societal practices based upon, and in what ways does disability disrupt these assumptions (dis/ capitalism, dis/science, dis/medicine and dis/citizenship)? Similarly, were we to accept that disability has the potential to rethink how we might approach labour or independent living, what would this look like in reality (dis/work and dis/independence)? What do disabled children do to the widely held phenomenon of the ‘normally developing child’ that is at the epicentre of many national educational systems (dis/development)? Equally, though, what normative aspects of the child do we (should we) hold on to (dis/child)? Dis/ability usefully disarms, disrupts and disturbs normative, taken-for-granted, deeply societally ingrained assumptions about what it means to be human and what it means to be able (dis/human). At the same time, however, we are mindful of keeping hold of the human: not wanting to abandon it (dis/human). Who would want to give up the human? When so much political work has been done around the human and his/her rights, it would seem unthinkable to dismiss the human. But, we also worry about what the human is (or what it has become) and the foundations on which this human is based. We are, of course, not alone in having these anxieties. In the arena of dis/ability studies, Titchkosky (2011, 2012, 2014) in particular has explicitly raised questions about the human as it relates to disability. She observes: Critical projects such as feminist research, gender and queer theory, and cultural and critical race studies share an interest in questioning how certain people are regarded as on the edge of all that counts as human. Disability studies shares this interest as well; it explores how disabled people figure on the edge of the ordinary orders of daily life, including education, work, leisure, and love, and it studies how such exclusion is normalized. (2012, p. 82) She is especially concerned about the rigidity of what we often pass off as human. It remains the case today, she argues, that despite the universal human condition of embodiment, and even with efforts to establish a universal and transcendent sense of human, not all bodies are granted the status of persons (let alone of human). In this sense, she concludes, ‘segregated from life, disability appears as though it is detached from the wider question of what it means to be human’ (2012, p. 82). Titchkosky’s work parallels the post-colonial studies of Sylvia Wynter (2003) who describes her analytical–political project as: Human Struggle vs. Ethnoclass Man (the capitals are in the original paper). Her project circles around two questions: who is excluded from ethnoclass man and, in contrast, who is engaged in human struggle? Those categorised as outside, excluded and often invisible are that: category defined at the global level by refugee/economic migrants stranded outside the gates of the rich countries … with this category in the United States coming to comprise the criminalized majority Black and dark-skinned Latino inner-city males now made to man the rapidly expanding prison-industrial complex, together with their female peers – the kickedabout Welfare Moms – with both being part of the ever-expanding global, transracial category of the homeless/the jobless, the semi-jobless, the criminalized drug-offending prison population. (Wynter, 2003, p. 260) To this list of outsiders we can add, we would argue, those people caught up in the dis/ ability complex. For citizens to claim a ‘normal’ North American identity entails putting up of a ‘visible distance between themselves and the Black population group’ (Wynter, 2003, p. 260), and then over-presenting their normative selves as the only way to live. Hence, the struggle of our times, ‘one that has hitherto had no name, is the struggle against this over-representation’ (p. 262). She notes: The central over-representation enables the interests, reality, and well-being of the empirical human world to continue to be imperatively subordinated to those of the now globally hegemonic ethnoclass world of ‘Man’. (p. 262; italics added) Our dis/human studies remain, therefore, ambivalent about the human because too often they represent only a minority and bypass the empirical human world (to use Wynter’s vocabulary). Ambivalence is the state of having mixed feelings or contradictory feelings about something or someone. Becoming dis/human is our response to the ambivalent state we find ourselves in relation to the human. We are interested in the experience of having simultaneously conflicting feelings towards this concept of the human. In trying to understand dis/ability, we find ourselves necessarily ambivalent. Ambivalence – we are told by the Oxford English Dictionary – relates to equivocation, doubt, uncertainty, irresolution, vacillation, tentativeness, shilly-shallying, haziness and equivocacy. This latter term also resonates with our feelings about the human. Our intimate experiences of dis/ability have meant that we have found our interpretations lacking and are therefore forced to commit the fallacy of equivocation. The fallacy of equivocation occurs when a key term or phrase in an argument is used in an ambiguous way, with one meaning in one portion of the argument and then another meaning in another portion of the argument.3 Our equivocacy around the human – and the ambivalence intrinsic to the equivocal phenomenon of dis/ability – has been further illuminated through our work with people with the label of intellectual disability and their allies and alliances. As we shall develop in detail below, they have drawn our attention to the complex work they are involved in around dis/human moments. Like Eva Feder Kittay, our lives with the phenomenon of intellectual disability, both personally and professionally, have demanded us to rethink our philosophical positions on the meaning and nature of what it means to be (dis)human: When we try to look at the world in the sunlight, we continue to see the very real shape of many things too easily missed by others in the exposure of too much light. Even if philosophy whitewashes disability and therefore passes over children such as ours, with their impairments, with the special care they require, their lives direct us to the point and purpose of philosophy – the pursuit of wisdom. Their lives help us in our quest to discern what the meaning of life is; what makes life worth living or what makes a life a good life; what makes relationships ethical; what personhood is; how to understand beauty, anomaly, function, capacity, joy; what justice and equality are. (Kittay, 2002, p. 239) Such philosophical work comes from rejecting the fiction that ‘philosophy is news from nowhere’ and, instead acknowledging, ‘we’ve spoken from a position’ (Kittay, 2002, p. 240). One position that we have spoken from before – and one from which our interests in the dis/human originates – is that of post-human theory (see for example Goodley & Runswick-Cole, 2012). Now is not the time or space to capture this complex area of theory and analysis. Suffice to say, though, that those of a post-human persuasion are sceptical about the centrality of the individual in our everyday thinking. The fully functioning person as an entity psychologised, internalised, rational, autonomous and individualised self – distinct, bounded and separated from others – is a classic humanist trope. Appropriating Rosi Braidotti (2003, 2006), this categorisation of the same individual human as distinct from many monstrous Others has a number of origins, one of which is the enlightenment in which rational man emerged as victorious over irrational nature. Following Goodley (2014, p. 63) are not only valued forms of humanness found to have deep historical roots in the rise of science, rationality and capitalism, but they also have been moulded further into preferential categories (reified types of humanity) and their opposite (disposable forms of humanity). Erevelles (1996) carefully guides us through this changing relationship with humanness: [W]hen even those who espouse radical discourses seem unable to reconceptualise an alternative world without being locked into the political constructions of what constitutes appropriate humanness, then it becomes apparent that the disability movement has a task that goes above and beyond merely extending the boundaries of the discourses that celebrate humanism and instead needs to focus its energy on re-theorising itself. (p. 522) Post-human advocates are primed ready to debate humanness and the taken-for-granted assumptions that underpin such a ubiquitous though nebulous term (see Goodley et al., in press). What it means to feel human is also a matter of how one is meant to feel as a human in contemporary society. We suggest that, like post-human interventions, becoming dis/human allows us to interrogate the kinds of human currently valued by society: humankinds that are contested and directly contravened by the presence of disability. At the same time, desiring the dis/human allows us pragmatically and politically to claim the human in the lives of disabled people with intellectual disabilities. This, for us, is key to our project because of the ways in which the status of human has been and continues to be denied in the lived experiences of disabled people with intellectual disabilities.

#### Liberalism can include individuals with disabilities

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5. Revising political liberalism I: beyond Hartley’s contractualism

The aim of this section and the next is to propose a substantial revision of Rawls’s theory that accommodates the justice claims of the disabled while upholding the project of political liberalism. A question that needs to be answered at this point is: why should we uphold the project of political liberalism, rather than endorsing a different model that more neatly fits with our intuitions concerning what is due to the disabled? First, the general project of political liberalism is compelling. Rawls’s political liberalism aims to identify a common ground of political ideas that can work as the basis on which the most important political decisions should be made. This project is of the greatest importance because, if successful, it creates legitimacy by building institutions on the basis of concepts that are acceptable to each reasonable individual. Moreover, it promotes stability in societies that are characterized by deep pluralism. Second, despite Rawls’s failure to take the interests of the disabled into consideration, political liberalism is well suited to support the justice claims of individuals with disabilities. This is because the idea that the disabled are citizens who deserve our respect is part of the common culture of our societies. In other words, there is an overlapping consensus on the idea that rights, opportunities and distributive shares must be granted to individuals who are not fully cooperating members of society, including those who fall below full moral powers. It is widely believed that those with physical disabilities should have the same rights as their fellow citizens, live in a social environment that does not excessively limit their opportunities and receive benefits that help meet their special needs. Besides, although the state or third parties are given exceptional rights to interfere with the autonomy of individuals with severe cognitive disabilities, it is widely recognized that the mentally disabled are citizens whose basic interests must be protected by the law.[12](https://www.tandfonline.com/doi/full/10.1080/13698230.2013.775734) In the public space, any proposal that individuals who are not fully cooperating members of society should have their basic interests neglected would be widely received with outrage. Such proposal would be said to fit a fascist society, not a decent one. Among other legal documents, the United Nations Convention on the Rights of Persons with Disabilities (UN General Assembly, A/61/611) can be taken as the epitome of this widespread attitude. Adopted in 2006, the Convention requires that all individuals with disabilities should share in the enjoyment of equal fundamental rights.

#### The alt’s framework is fatalistic ⁠— it’s necessary for participation in political areas for disabled people in a neoliberal society

Dowse 9, (Leanne Dowse, 7-22-2009, “’Some people are never going to be able to do that.’ Challenges for people with intellectual disability in the 21st century,” Disability & Society, pp. 573-574)

The emphasis on the achievement of individual independence and productivity precipitated by globalisation and embedded in neo-liberalism effectively renders people with intellectual disability, who are often unable to attain self-sustainability, problematic. The new technologies of welfare are economically driven and actively directed toward investing in the individual pursuit of independence, framing inclusion in terms of productivity and contribution, rather than self-fulfilment or quality of life. This has differential impacts on the range of people with intellectual disability, including those who are able to participate in the employment market and those with high support needs who will not be part of the labour market. Cognitive limitations and prescribed incompetence deem at least some people with intellectual disability to be inadequate choice makers. This deficit approach presumes an incapacity to reason and results in the relinquishing of claims for justice, where equality and rights become constrained or redirected (Wasserman 2001). Perceived as unable to achieve independence, such people are then seemingly relegated to dependency relationships where they are likely to be continuously placed under protective moral custodianship whereby their ‘best interests’ are determined by more competent others. Protections which set out who can take decisions on behalf of another, under what circumstances and how this may be done are exemplified in statutory frameworks such as the UK mental capacity Act 2005 or the range of state-based guardianship legislation in the Australian context. While operating at one level to protect individuals with intellectual disability, these frameworks also contain the risk that participation in the public arena may be restricted, denied or exempt. Developments in social policy over the past half century have made progress towards improving the material conditions of people with intellectual disability by giving them access to more ‘normal’ or ‘better quality’ lives. Some approaches have also recognised, in part, the political agency of people with intellectual disability. The political project of self-advocacy has, over the past 30 years, worked to cultivate the voices and knowledges of people with intellectual disability. Access to recognition, legitimacy and participation in the political arenas where issues to do with their social management are debated continues to be complex for people with intellectual disability as a collective. A focus on the support of this representation must be a fundamental underpinning to the repositioning of people with intellectual disability in a globalised world.

# 2NC

### 2NC---AT: Counter Interpretation

#### 5---Neg-neg wrecks switch side debate

Victory Briefs 12 [“Neg-Neg” in LD?,” Feb 25, 2012, <https://www.vbriefly.com/2012/02/25/201202neg-neg-in-ld/>]

POSTED ON FEBRUARY 25, 2012 BY VICTORY BRIEFS

Additionally, I’m not convinced the advantages of a Neg-Neg model outweigh what I believe is a compelling interest in switch-sides debate. Any coach who’s worked with new debaters should note than one of the first and most transformative learning experiences for a student is adopting diametrically opposed positions on a topic. Allowing debaters to share in contestable premises could encourage conformity in an activity that is already short on innovation. Paradoxically, this radical departure from orthodox practice enables debaters to rely on conventional wisdom at the expense of difficult research and critical thinking. Glass suggests that debaters ought not have to defend positions that are inconsistent with their own beliefs, but this seems to be one of the most useful virtues that debate provides a student. Much has already been written on these virtues, and there’s little question that a Neg-Neg trend would come at their expense. That’s not to say a debate about competing premises or policies isn’t itself valuable. But, that debate can and should happen even in a traditional Aff-Neg framework.

### 2NC---T: O/V

### 2NC---AT: DA Identity

### 2NC---T: Impact

### 2NC---AT: Governmentality DA

### 2NC---T: TVA

#### Dow Chemical uses mergers and acquisitions to rapidly increase growth and dominance

Dye 17, is an associate news editor. Ed Crooks is a former US energy and industry editor. (Jessica, 6-15-2017, “Dow-DuPont merger gets US antitrust approval,” Financial Times, https://www.ft.com/content/9af7fd4d-d8c5-3b21-9abb-369513553158)

The merger of Dow Chemical and DuPont, two of the world’s largest chemical companies, cleared a major hurdle on Thursday after the companies reached a proposed settlement with US antitrust regulators to allay competitive concerns. The proposed settlement over the agreed $142bn deal would resolve a lawsuit filed publicly on Thursday, in which the US Justice Department said it was concerned about the impact of the merger on competition in the market for crop-protection chemicals, as well as two chemical products used to make flexible food packaging among other industrial applications. Approval is conditioned on the divestiture of some assets, including parts of DuPont’s crop-protection portfolio and Dow’s global ethylene acrylic acid copolymers and ionomers business. The companies said in a joint statement on Thursday that those commitments are consistent with measures undertaken to secure EU approval, and that they will not have to make any additional divestitures under the US settlement. The merger was first agreed to in 2015, after both companies faced pressure from activist investors. From the start, the plan has been to break up the merged group into three more focused companies. Completing the deal, however, has taken longer than the company has hoped. Key regulatory approvals have been secured in the EU, China and Brazil. The companies had previously said they expect the transaction to close in August. Andrew Liveris, Dow’s chief executive who is slated to be executive chairman of the merged DowDuPont, said the decision meant the companies had “taken a significant step forward in bringing together these two iconic enterprises.” Ed Breen, DuPont’s chief executive, who will have the same role at the merged company, said the companies were on track to close the deal “in a manner that maintains the strategic logic and value creation potential of the transaction.” Both men said they expected the planned break-up of the merged group into three companies to create significant benefits. Mr Breen said the spin-offs would “unlock significant value for shareholders, as we execute our plan for each company to be a growth-oriented leader in attractive [market] segments”.

#### Antitrust law is enforceable, every criticism they have is solve by new prohibitions

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The Washington Center for Equitable Growth late last year held an event, titled “Restoring Competition in the United States: A Vision of Antitrust Enforcement for the Next Decade,” to discuss its new antitrust transition report. The report is the work of seven academic experts with deep policy experience in antitrust enforcement. It begins with an assessment that the United States suffers from a growing monopoly power problem, which increases the cost of goods and services, lowers wages, limits innovation, and exacerbates inequality. The courts, Congress, and the antitrust enforcement agencies all share responsibility for the rise of monopoly power. The report offers three foundational policy actions to reinvigorate competition policy to ensure current and future economic growth is strong, equitable, and sustainable as the U.S. economy recovers from the coronavirus recession: Enact new antitrust legislation and increase resources for antitrust enforcement Revitalize antitrust enforcement to strengthen deterrence Commit to a “whole government” approach to competition policy Through these actions, the U.S. government can shift the nature of competition and reestablish the United States as a nation dedicated to promoting innovation, competition, and economic equality. Below is a brief summation of each of these policy actions. The report is authored by Bill Baer, a visiting fellow (on leave) in government studies at The Brookings Institution; Jonathan B. Baker, research professor of law at American University Washington College of Law; Michael Kades, director for markets and competition policy at the Washington Center for Equitable Growth; Fiona Scott Morton, the Theodore Nierenberg professor of economics at the Yale University School of Management; Nancy L. Rose, the Charles P. Kindleberger professor of applied economics at the Massachusetts Institute of Technology; Carl Shapiro, professor of the Graduate School at the Haas School of Business and the Department of Economics at the University of California, Berkeley; and Tim Wu, the Julius Silver professor of law, science and technology at Columbia Law School. Overview of competition policy Antitrust scholars recognize a shift in the competitive nature of the U.S. economy; large firms’ increased profits come at the expense of their workers, customers, and competitors. While mergers in some industries, such as beer, may seem harmless, in reality, they frequently increase prices for consumers. The antitrust laws today come up short in deterring anticompetitive behavior. One study of manufacturing plants found that mergers between competing firms resulted in increased markups yet little to no improvement in productivity or efficiency. Looking into an array of industries (for example, television, home building, dialysis centers, and even vitamins) reveals evidence of anticompetitive behavior and growing market power, along with its effects on wages, prices, or competition. During the event, Dan Crane, professor of law at the University of Michigan, expressed skepticism with the report’s conclusion that the U.S. economy as a whole faces a competition issue. “[Competition] is a market-specific problem, and to recognize that fact is important to understanding the implications for legislation, reform, funding, and targeted enforcement going forward,” said Crane. To that point, the authors of the report write that while antitrust enforcers should look at industries where there is evidence of anticompetitive conduct, on average, increased competition across the U.S. economy would address issues of inequality. Modern research indicates that growing market power hurts consumers, competitors, and vulnerable communities. The authors point to the macroeconomic implications of such market power increases, including decreased wages among low-skilled workers and a slowdown in output and Gross Domestic Product. Rises in market power contribute to increases in income inequality. Low-skilled workers receive a lower share of profits, while stockholders and higher-skilled workers receive a higher share. Growing market power often is seen alongside monopsony power, where a single firm is the buyer of labor and has the power to set wages and working conditions for employees. Employer consolidation has effects on high-skilled workers. Evidence in the healthcare industry, for example, shows us that hospital mergers account for negative wage growth among high-skilled healthcare professionals but not mid- and low-skilled workers. Enact new antitrust legislation and increase resources for antitrust enforcement Flawed legal precedent and disproven economic theories haunt antitrust enforcement today. Over the past 40 years, the federal courts relied on antiquated neoclassical economic theories that resulted in widespread approval of anticompetitive practices. Simply asking for stricter enforcement will only have limited impact on widespread market power. Congress needs to update the antitrust laws to explicitly outline what the laws should prohibit and to prevent the courts from narrowing antitrust protections. Doing so can prevent the courts from leaning on arguments that are skeptical of enforcement. The authors say that successful legislative reform would accomplish the following: Correct flawed judicial rules that reflect unsound economic theories or unsupported empirical claims Clarify that the antitrust laws protect against competitive harms from the loss of potential and nascent competition, especially harms to innovation Incorporate presumptions of illegality that better reflect the likelihood that certain practices harm competition Recognize that, under some circumstances, conduct that creates a risk of substantial harm should be unlawful even if the harm cannot be shown to be more likely than not Alter substantive legal standards and the allocation of pleading, production, and proof burdens to reduce barriers to demonstrating meritorious cases The co-authors of the report argue that substantive antitrust reforms, procedural reforms, and providing financial resources to the antitrust agencies are critical for protecting competition. In order to deploy these initiatives, the two federal antitrust enforcement agencies—the Federal Trade Commission and the U.S. Department of Justice’s Antitrust Division—need resources. The report recommends an additional $600 million in funding, which would compensate for stagnant funding over the past decade and allow for significant expansion of the three antitrust enforcement areas: criminal, merger, and civil nonmerger enforcement to address the growing market power problem. Additionally, more funding will enable the two agencies to conduct economic policy studies and merger retrospectives, and allow agency enforcers and economists to advocate for competitive practices throughout the government. A commentator at the Equitable Growth event, Ganesh Sitaraman, professor of law at Vanderbilt University, was supportive of the reforms proposed in the report but advocated for a broader approach to the issue. “We should think about legislation not in just the narrow, but in multiple sectoral domains, if we want to infuse our economy with the spirit of competition,” said Sitaraman. New legislation, he said, can protect existing and possible competition, and should explicitly identify behaviors that are anticompetitive. Countering that point, commentator Josh Soven, attorney at Wilson Sonsini, argued that while aggressive antitrust enforcement is important, legislative reform is not the route to take to promote competition because the government’s success in stopping potentially harmful mergers lies in the strength of the cases and evidence they bring to the courts. He said that building an unwavering case rather than reforming the antitrust laws will warrant a competitive outcome. The authors of the Equitable Growth report, however, see legislative reform as the strongest pathway toward improving issues of competition such as deterrence.

#### The goal of the DC-9 was to break up Dow which antitrust can do, but it failed because the protest was unable to engage the law

Carroll 20, is an Associate Producer at WETA. He is a recent D.C. transplant who writes about ethnic histories, social movements, and, occasionally, the mafia. (Frank, 1-23-20, “"Dow Shalt Not Kill": The Story of the D.C. Nine,” Boundary Stones, https://boundarystones.weta.org/2020/01/23/dow-shalt-not-kill-story-dc-nine)

Despite the absence of any detailed planning, they had a rough sketch of how the evening would go. The evening of March 22, Bernie Meyers gathered a group of photographers and journalists, who he had called in advance, and led them to a location in the Washington Post building, where they could witness the break-in across the street at the Dow Chemical offices.[8]Meanwhile, the others entered the building and made their way to the Dow office on the fourth floor. As Malone recalled recently, the mood was light: “We were not experts in any way, shape or form, at what we were doing, so there was laughter because it's like, how do we get the door open? I brought a crowbar, right? I hope it works.”[9] It worked; they broke in, and Joann and Catherine set to work finding files that related to Dow’s role in the U.S war effort (more on this later). They threw those files out the window, where they were collected and published by supporters who had gathered on the street, and eventually by the Washington Post. Meanwhile, the others vandalized the Dow office until the police arrived. But why Dow Chemical? After all, many war resisters had targeted draft boards for acts of vandalism — why target a private corporation? The 9 outlined their motives in a statement entitled “An Open Letter to the Corporations of America,” which was distributed to the gathered press at the time of the break in. “Today, March 22nd, 1969, in the Washington office of the Dow Chemical Company, we spilled human blood and destroyed files and office equipment,” began the page-long statement. The protestors then attacked the role of corporations in the United States war effort in Vietnam: We are outraged by the death-dealing exploitation of people of the Third World, and of all the poor and powerless who are victimized by your profit seeking ventures. Considering it our responsibility to respond, we deny the right of your faceless and inhuman corporations to exist…You, corporations, who under the cover of stockholder and executive anonymity, exploit, deprive, dehumanize and kill in search of profit…In your mad pursuit of profit, you, and others like you, are causing the psychological and physical destruction of mankind. We urge you all to join us as we say no to this madness.[10] Dow Chemical, in particular, had been selected as the target because of its role in the “production of napalm, defoliants, nerve gas.’”[11] Begin described Dow’s role in the war in stark terms: “They were profiting so much. They made the napalm, they made the black bags that people came home in, and they made the defoliants. They were so involved in this war as a profit-making venture.”[12]

#### Antitrust empirically successful, breaking up standard oil obviously wasn’t perfect, but it did increase the quality of life for millions of people because it distributed power away from a single entity which the 1ac says should not happen.

#### Antitrust law can be used to combat inequality in the Global South

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Antitrust laws are sufficiently malleable to achieve goals far beyond the narrow efficiency-based goals that have dominated antitrust over the past 60 years.1 Using antitrust to achieve other than efficiency-based goals has often been advocated for development purposes, especially for countries in the Global South.2 Although developing countries merit a specially tailored antitrust policy that addresses their special needs of development and poverty eradication, the rise of global inequality “globalizes” the special status of antitrust in developing countries. Over the past decades, inequality has continued to rise, and even the economies that saw high levels of growth witnessed rampant income disparity as trickle-down economics failed, and entrenched local elites and multinationals captured most of the surplus value generated through higher growth rates. This has led to an unprecedented rise of populism, global unrest, and uprisings that have demanded and/or promised policies and rhetoric that include the forgotten masses. The rise of inequality has also led to deep discussions about possible solutions, from Global Taxation,3 the narrowing of the social welfare state, trade wars, to protectionism and industrial policy. This article is an attempt to bring to the discussion the antitrust laws as a means to reduce poverty and address inequality. It acknowledges, at the outset, that antitrust laws can only play a small role in addressing inequality, and an even smaller role in eradicating it. Albeit small, it is a role that is not to be underestimated. Antitrust laws, after all, are laws that shape markets, impact prices that firms set and consumer pay, and often dictate how firms and market players behave. Using antitrust laws to address inequality draws upon alternative goals that I have once proscribed to developing countries,4 but now I deem suitable to reach beyond the Global South. To unpack antitrust law as a market tool suitable to address inequality starts with a rejection of the efficiency-only purpose of antitrust by framing it as public interest law. Studying antitrust as public interest law over time shows how the narrowing of the public interest, to be sought under antitrust enforcement, allowed the efficiency-only discourse to reign its policy. Once we frame antitrust as public interest law, we can explore the means to use antitrust law to address inequality. The paper is divided into four parts. Part I is centered on the efficiency versus non-efficiency reach of antitrust. Part II frames antitrust as public interest law and draws upon its history. Part III discusses how antitrust as public interest law can address inequality. Part IV concludes.

#### AT: Shift DA: They don’t solve because teams would just read the states cp in the 1nc.

#### AT: Cruel Optimism DA: They link more and don’t solve because they don’t do anything, but fiat is good because it allows to imagine real world strategies that could materially improve peoples live. For example, the only way that DOW could be broken up is through antitrust, so it is important that we know about it.

#### Only our interpretation incentivizes strategic balancing after tournaments, in debates where the 1ac is topical 2as are forced to create and innovate 2ac strategies to respond to new arguments, however this incentive is lost under their model because it is far easier to alter the 1ac to no link arguments when the aff is not bound to a normative statement of the resolution---that decreases the quality of debates and prevents nuanced discussion over their lit base.

#### Under our model their arguments would get better---a team at Northwestern would read a topical plan and lose to a K of [ antitrust ] and then innovate going to Kentucky and try to take into account the criticism, over a season of nuanced debates centered around the topic debaters are able to interrogate specific instances of antiblack violence and develop positive effective solutions that have been rigorously tested---the evaluation of alternatives vs. a policy plan never happens under their interpretation because teams will always move far away from the resolution to gain a competitive advantage.

# 1NR

## Case

### 1NR ⁠— Presumption

#### The unlight parts of 1AC Ho also demonstrate this argument

Ho 20 (Ai Binh Ho, A dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy (English Language and Literature) in the University of Michigan 2020, *The Right to Pain and the Limits of Testimony*, https://deepblue.lib.umich.edu/bitstream/handle/2027.42/163097/aibinhho\_1.pdf?sequence=1//ng

The mobilization of disability serves as an opportunity not only for the US to heal its “Vietnam Syndrome,” but also for Vietnam to escape poverty, reclaim land, and promote national unity and moral superiority. The Vietnamese government capitalizes on the liberal sentimental gaze as it calls on a diplomacy based on visible victimhood. Disability’s visibility in public memory is a relatively new part of Vietnam’s postwar development. Analyzing revolutionary photographs from the US War, Thy Phu shows that “[b]ecause injured and dead bodies were considered dispiriting and demoralizing, they were rarely seen, and pulled from circulation if not censored outright as unsuitable for revolution, perhaps even as counterrevolutionary” (304). She explains that Vietnamese photographs from the US War follow a “revolutionary looking,” which is “a practice that . . . attends to the importance of repurposing salvaged material, making do with the resources available in one’s environment,—and alternately acknowledging and disavowing injury” (316). In post-embargo Vietnam, claiming injury is a “revolutionary looking” in the memory war, repurposing the hegemony of humanitarianism indicative of the post-World War II order that upholds Western power through the framework of morality. During and after the war, Vietnam saw the undeniable power of the mobilization of disability on the global stage with international attention and emotional connection to Phan Thi Kim Phuc, “the napalm girl.” While after the war the US extended President Richard Nixon’s 4 1964 trade embargo to all of Vietnam until 1994, the image of Kim Phuc and photographs of victimization brought Western reporters and humanitarian aid to Vietnam. When Life magazine published its annual “The Year in Pictures” issue in December 1972, it featured a single entry related to the conflict: a two-page spread of a portrait of a smiling Kim Phuc inset with the famous picture of her running naked as napalm seared into through her flesh under the headline “The War and Kim Phuc, Memories Masked by A Smile” (54-55). Kim Phuc became an official war victim to negotiate a reconciliation between Vietnam and the US and its allies. When she was eighteen, nine-years after she was captured on camera running from the napalm strike, government officials from the information ministry of the People’s Committee found her with the goal of leveraging people’s emotions towards her to sponsor a new narrative of victimhood and friendship in order to influence the US and its allies to lift the embargo and provide aid and investment. She promoted Vietnam’s legibility on the global stage as a symbol of the sympathetic victim in need of foreign attention rather than as a hostile country to avoid. The Vietnamese state exploited Phan Thi Kim Phuc through what I will detail in the first chapter as the disabled aesthetics of beautiful suffering, in which it mobilized her victim status as proof of US colonialism against her will. The communist regime constructed her into a propaganda tool by repurposing the narrative formed and disseminated by Western media. She is the perfect war victim precisely because she embodies beautiful suffering. The napalm missed her face, and her scars could be hidden under clothes. Because the war—not her—triggers shock, disgust, and grief, she can embody hope. Originally nameless in the Vietnamese public, Kim Phuc’s power comes from Western responses (her experience is too common to carry such weight in Vietnam). Within the Vietnamese context, her body functions as evidence of illegal chemical attacks that harmed and continue to disable Vietnamese people. 5 In the US context, it is the potential to heal her that makes her a ready symbol. Healing her through surgeries and sending money and gifts provides hope for self-healing and suturing the disruption of US notions of wholeness, beauty, and humanity. She represents beautiful suffering because the intervention in her suffering offers the potential for viewers to see themselves as beautiful. It restores US identity from war criminal to redeemed guardian of freedom. The trace of violence forever marked by the iconic photograph is mitigated by her recoverable body. The US news media transforms Kim Phuc from a war victim into a “Vietnamese Marilyn,” according to Judith Coburn in The Los Angeles Times Magazine’s “The Girl in the Photograph: 17 Years Later.” In the same article Coburn adds, “From Kim Phuc’s wounds have sprung a passion to be normal,” by which Coburn means a feminine desire to marry and have children (n.p). Kim Phuc’s Asian feminine beauty directly comes from her racialized helplessness that can secure white masculinity within the military industry that both produces and challenges notions of masculinity defined by the shifting fulcrum of violence and morality. Alongside the 1955 humanitarian project “Hiroshima Maidens,” in which the US financially supports plastic surgery for twelve Japanese women disfigured by the atomic bombs, Kim Phuc’s role exposes medical humanitarianism as a gendered, racialized arm of the US war machine. The US engagement with disability—a medical and aesthetic intervention towards normalization— reveals its relation to war as healing these female bodies functions as a concrete and tangible way to reconcile the national wound of controversial military interventions. Kim Phuc’s recognizability as an icon of the atrocity that shaped Western reception of the Vietnam-US War represents the power of witnessing. She garnered sympathy and received many donations at the moment that the photograph of “napalm girl” was internationally disseminated. She has since founded of Kim Phúc Foundation, served as a UNESCO Goodwill Ambassador, 6 and received numerous honors and titles, including membership in the Order of Ontario and several honorary Doctorates of Law. Yet, I begin with Kim Phuc’s experiences in “The Right to Pain” to point to the failure of witnessing. Despite the prevalence of her image in popular media and academia, her pain and the condition in which she is called to speak continues to be overlooked. Kim Phuc’s debilitation is objectified and appropriated by dueling nationalist projects. The Vietnamese government workers provided Kim Phuc with a script that emphasized her happiness and success under communism despite the US produced injury, a script from which she could not deviate. While she could speak about the physical suffering from her napalm burn since it was caused by an imperial force, she was chastised “for embarrassing the regime by speaking of the difficulties of life in postwar Vietnam” even as her family did not have enough to eat (Chong 201). The full-time role as official war victim eventually forced her out of college despite her tremendous effort to become a medical professional and her repeated pleas to stay in college. When she tried to hide from officials, they harassed and threatened her parents. Kim Phuc’s impoverished life and her struggles as a hostage of the state reveal the exploitation of pain and victimhood for a nationalist agenda. Kim Phuc, as Mimi Nguyen cogently shows, is made into an agent of liberal empire, “negating murderous structures of race and coloniality as the present of liberal violence” and “redeeming empire from being held hostage to a shameful, irreversible past” (130, 86). Just as Kim Phuc did not want to be a cultural soldier for postwar Vietnam, she did not readily choose to become an ambassador of liberal empire. Poverty, lining up weekly for food, clothes, and diapers for her baby, and her uncertain refugee status motivated Kim Phuc to sell her story: “Driven by their [her and her husband’s] desperate financial straits and their guilt at being unable to send money to their families in Vietnam, Kim Phuc relinquished her plans to ‘stay quiet’” (Chong 7 357) Her biography The Girl in the Picture opens with Kim Phuc hiding, full of anxiety, in her Toronto apartment from journalists who have discovered her address. She laments to her husband that the “journalistic hounds” felt like “a bomb falling out of the sky,” equating the trauma of being a propaganda victim with being physically injured by war (6). It seems an unlikely coincidence that she and her husband gained permanent residence in 1995 (three years after they entered Canada) shortly after she re-entered public life (357). The precarious condition in which Kim Phuc speaks reveals that the testifier remains under duress. The limited framework of her testimony—one of forgiveness and grace—also shows the labor demanded of the Vietnamese female refugee in the memory war and her role as financial and cultural caretaker of her nation and family. The hypervisibility of Kim Phuc’s napalm burn masks the particularities of her life, simplifies the destruction of war, and marks it as over within a narrative of reconciliation and healing. The mobilization of disability reveals the effacing power of the regime of visibility to dehumanize not only people out of sight, but also the very people recognized. Moving across national, media, and temporal borders, her war-produced debilitation has attached to new narratives beyond the confines of her body. The symbolization of her napalm burns as the horror of the US military violence disappears her daily experiences of bodily pain. If the goal of witnessing is recognition of the perpetrated subject, then, indeed, witnessing fails not only Kim Phuc, but also the other millions of Vietnamese, Hmong, and Cambodians killed and maimed during the Vietnam-US War. This dissertation aims to move the injury back to the body: to recognize the right to pain, not simply to live or die, but to experience all the complexity of pain. I am concerned with the possibility of caring about Kim Phuc’s daily experiences of intense chronic pain, her mothering 8 as a burn survivor who cannot feel her children’s touch, and her everyday movements and knowledge production as a result of the pain. The interiority of her life does not depoliticize the war-produced debilitation; it shifts the conversation away from the state’s intentions, violence, and control and toward the subjects the state aims to encapsulate. Considering her pain through her interactions of being a daughter, wife, mother, neighbor, and friend humanizes her. The repetition of a few images collapses the meaning and depth of atrocity through verbal and visual cues.2 Photographs become a metonymy for a larger terrain—an era, a culture, a war, a nation, a people. The faces of the Vietnamese civilian, immolating monk, and Vietnamese communist prisoner become the war and country. These images capture people, highlighting pain and fear on faces; however, they articulate a landscape. Frozen within the frames of black and white photographs, Vietnamese bodies are present but their subjectivities are absent. Vietnamese American writer Thanhha Lai recalls that "I . . . had my arm hair pulled the first day of school. The fourth graders wanted to make sure I was real, not an image they had seen on TV" (Author’s Note). The need for Lai’s classmates to pull her arm hair attests to the petrifaction power of images that makes it difficult to imagine her existence even as she stands, studies, and speaks in front of them. Recognizing the right to pain, then, returns the blood and flesh to the two-dimensional flatness of photographs and imagines the flinch and alienation Lai might feel when her arm hair was pulled.

### 1NR ⁠— Disability

#### Even if political liberalism currently excludes the disabled, discussing questions of implementation can revise it and bailing on it is worse

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I argue that any proposal abandoning the language of political justice would not seem to do enough for those individuals with disabilities who fall outside the basic idea of persons as depicted by Rawls. In fact, the intuitions supporting the idea that concepts like rights and opportunities are indispensable are very strong.11 Let us go back to the examples of individuals falling outside Rawls’s idea of persons because their disabilities prevent them from being a net beneﬁt to social cooperation. They are individuals who need multiple carers to work, or whose disabilities prevent them from providing a beneﬁt to social cooperation that is large enough. To put the point more sharply, it is worth noticing that the disabilities in question are compatible with being in full possession of one’s logical and moral powers. Now, should we accept that those individuals ought to be given no rights or opportunities? An afﬁrmative answer would strike us as implausible, and for a good reason. In a liberal society, having one’s rights, opportunities and basic distributive entitlements acknowledged is one and the same as being recognized as an equal. And what is missing from Rawls’s political liberalism is precisely the idea that falling below a threshold of full cooperation should not be enough to prevent the disabled from being regarded as persons on an equal footing with anyone else. In sum, Rawls’s political liberalism is not amenable to any extension that, keeping the basic ideas of society and persons intact, is able to include a concern with the status of individuals with disabilities. In addition, the proposal that the interests of the disabled are not for public reason to protect is not satisfactory. Consequently, a substantial revision is the only way to reconcile political liberalism with our intuitions concerning what is due to the disabled.

5. Revising political liberalism I: beyond Hartley’s contractualism The aim of this section and the next is to propose a substantial revision of Rawls’s theory that accommodates the justice claims of the disabled while upholding the project of political liberalism. A question that needs to be answered at this point is: why should we uphold the project of political liberalism, rather than endorsing a different model that more neatly ﬁts with our intuitions concerning what is due to the disabled? First, the general project of political liberalism is compelling. Rawls’s political liberalism aims to identify a common ground of political ideas that can work as the basis on which the most important political decisions should be made. This project is of the greatest importance because, if successful, it creates legitimacy by building institutions on the basis of concepts that are acceptable to each reasonable individual. Moreover, it promotes stability in societies that are characterized by deep pluralism. Second, despite Rawls’s failure to take the interests of the disabled into consideration,

#### marked

political liberalism is well suited to support the justice claims of individuals with disabilities. This is because the idea that the disabled are citizens who deserve our respect is part of the common culture of our societies. In other words, there is an overlapping consensus on the idea that rights, opportunities and distributive shares must be granted to individuals who are not fully cooperating members of society, including those who fall below full moral powers. It is widely believed that those with physical disabilities should have the same rights as their fellow citizens, live in a social environment that does not excessively limit their opportunities and receive beneﬁts that help meet their special needs. Besides, although the state or third parties are given exceptional rights to interfere with the autonomy of individuals with severe cognitive disabilities, it is widely recognized that the mentally disabled are citizens whose basic interests must be protected by the law.12 In the public space, any proposal that individuals who are not fully cooperating members of society should have their basic interests neglected would be widely received with outrage. Such proposal would be said to ﬁt a fascist society, not a decent one. Among other legal documents, the United Nations Convention on the Rights of Persons with Disabilities (UN General Assembly, A/61/611) can be taken as the epitome of this widespread attitude. Adopted in 2006, the Convention requires that all individuals with disabilities should share in the enjoyment of equal fundamental rights.

#### Presuming an antagonistic relationship between disability and humanism is mutually exclusive with a more ambivalent understanding of the human that recognizes its potential positives ⁠— even if humanism has historically excluded disability, discarding it is net more violent

Goodley & Runswick-Cole 14, \*School of Education, University of Sheffield \*\*Research Institute of Health and Social Change, Manchester Metropolitan University (\*Daniel Goodley \*\*Katherine Runswick-Cole, 2014, “Becoming dishuman: thinking about the human through dis/ability,” Discourse: Studies in the Cultural Politics of Education, 37:1, pp. 1-15)

There are times when it is essential to embrace the able or the normal. After all, like them or loathe them, these phenomena undergird the language of citizenship, law and humanity. We also recognise an imperative to ‘dis’ ability. To ‘dis’ is a slang term from African-American culture: to put down, fail to show respect, abuse and disparage. At times, we will ‘dis’ the normal (necessarily refusing to show the normal the respect it expects), while, at times, respecting the normal (when one thinks, for example, about normative notions of human rights, morality and universal notions of basic respect of the human). The prefix dis indicates negation, lack or deprivation: to deprive something of its power. We feel this when we disagree. To negate is to nullify, invalidate, render null and void, make invalid, neutralise, cancel out, undo, reverse, revoke, rescind, abrogate, overrule, over turn, avoid and retract. To dis is to trouble. There is no doubt, whether or not we like it, that the dis/ability complex does some troubling work to the register of the normal and the condition of the human. This is hardly surprising when, paraphrasing Tanya Titchkosky (2012), making lives on the edges of humanity takes some guile and creativity. A dis/human position means that we recognise the norm, the pragmatic and political value of claiming the norm, but we always seek to trouble the norm. Becoming dis/human does not offer a prescriptive opposite to the conception of the norm, rather it works away at a norm that is always, and only can be, in flux. Disabled and human are, we suggest, too often set up as opposites, as the antithesis of one another. However, following Puar (2012, p. 50), we argue that they need not be oppositional but, rather, viewed as frictional: rubbing up against one another in interesting, dare we say, desirable ways. In thinking about our recent work with disabled people, their families and their allies, we have come to think of dis/ability studies as having a number of bifurcated complexes (Table 1). Our thinking is still in the early stages of germination in relation to this list of dis/ human concepts. This paper allows us to start pulling apart, interrogating and testing out the conceptual clarity and utility of these ideas. We want to ask what disability does to typical, common-sense normative human categories of adult, youth and family. How might disability affirm some of the ways in which these categories are lived out whilst, simultaneously, demanding new ways of living (dis/life)? When we think of the goals of capitalism, science, medicine and citizenship, what assumptions are these huge societal practices based upon, and in what ways does disability disrupt these assumptions (dis/ capitalism, dis/science, dis/medicine and dis/citizenship)? Similarly, were we to accept that disability has the potential to rethink how we might approach labour or independent living, what would this look like in reality (dis/work and dis/independence)? What do disabled children do to the widely held phenomenon of the ‘normally developing child’ that is at the epicentre of many national educational systems (dis/development)? Equally, though, what normative aspects of the child do we (should we) hold on to (dis/child)? Dis/ability usefully disarms, disrupts and disturbs normative, taken-for-granted, deeply societally ingrained assumptions about what it means to be human and what it means to be able (dis/human). At the same time, however, we are mindful of keeping hold of the human: not wanting to abandon it (dis/human). Who would want to give up the human? When so much political work has been done around the human and his/her rights, it would seem unthinkable to dismiss the human. But, we also worry about what the human is (or what it has become) and the foundations on which this human is based. We are, of course, not alone in having these anxieties. In the arena of dis/ability studies, Titchkosky (2011, 2012, 2014) in particular has explicitly raised questions about the human as it relates to disability. She observes: Critical projects such as feminist research, gender and queer theory, and cultural and critical race studies share an interest in questioning how certain people are regarded as on the edge of all that counts as human. Disability studies shares this interest as well; it explores how disabled people figure on the edge of the ordinary orders of daily life, including education, work, leisure, and love, and it studies how such exclusion is normalized. (2012, p. 82) She is especially concerned about the rigidity of what we often pass off as human. It remains the case today, she argues, that despite the universal human condition of embodiment, and even with efforts to establish a universal and transcendent sense of human, not all bodies are granted the status of persons (let alone of human). In this sense, she concludes, ‘segregated from life, disability appears as though it is detached from the wider question of what it means to be human’ (2012, p. 82). Titchkosky’s work parallels the post-colonial studies of Sylvia Wynter (2003) who describes her analytical–political project as: Human Struggle vs. Ethnoclass Man (the capitals are in the original paper). Her project circles around two questions: who is excluded from ethnoclass man and, in contrast, who is engaged in human struggle? Those categorised as outside, excluded and often invisible are that: category defined at the global level by refugee/economic migrants stranded outside the gates of the rich countries … with this category in the United States coming to comprise the criminalized majority Black and dark-skinned Latino inner-city males now made to man the rapidly expanding prison-industrial complex, together with their female peers – the kickedabout Welfare Moms – with both being part of the ever-expanding global, transracial category of the homeless/the jobless, the semi-jobless, the criminalized drug-offending prison population. (Wynter, 2003, p. 260) To this list of outsiders we can add, we would argue, those people caught up in the dis/ ability complex. For citizens to claim a ‘normal’ North American identity entails putting up of a ‘visible distance between themselves and the Black population group’ (Wynter, 2003, p. 260), and then over-presenting their normative selves as the only way to live. Hence, the struggle of our times, ‘one that has hitherto had no name, is the struggle against this over-representation’ (p. 262). She notes: The central over-representation enables the interests, reality, and well-being of the empirical human world to continue to be imperatively subordinated to those of the now globally hegemonic ethnoclass world of ‘Man’. (p. 262; italics added) Our dis/human studies remain, therefore, ambivalent about the human because too often they represent only a minority and bypass the empirical human world (to use Wynter’s vocabulary). Ambivalence is the state of having mixed feelings or contradictory feelings about something or someone. Becoming dis/human is our response to the ambivalent state we find ourselves in relation to the human. We are interested in the experience of having simultaneously conflicting feelings towards this concept of the human. In trying to understand dis/ability, we find ourselves necessarily ambivalent. Ambivalence – we are told by the Oxford English Dictionary – relates to equivocation, doubt, uncertainty, irresolution, vacillation, tentativeness, shilly-shallying, haziness and equivocacy. This latter term also resonates with our feelings about the human. Our intimate experiences of dis/ability have meant that we have found our interpretations lacking and are therefore forced to commit the fallacy of equivocation. The fallacy of equivocation occurs when a key term or phrase in an argument is used in an ambiguous way, with one meaning in one portion of the argument and then another meaning in another portion of the argument.3 Our equivocacy around the human – and the ambivalence intrinsic to the equivocal phenomenon of dis/ability – has been further illuminated through our work with people with the label of intellectual disability and their allies and alliances. As we shall develop in detail below, they have drawn our attention to the complex work they are involved in around dis/human moments. Like Eva Feder Kittay, our lives with the phenomenon of intellectual disability, both personally and professionally, have demanded us to rethink our philosophical positions on the meaning and nature of what it means to be (dis)human: When we try to look at the world in the sunlight, we continue to see the very real shape of many things too easily missed by others in the exposure of too much light. Even if philosophy whitewashes disability and therefore passes over children such as ours, with their impairments, with the special care they require, their lives direct us to the point and purpose of philosophy – the pursuit of wisdom. Their lives help us in our quest to discern what the meaning of life is; what makes life worth living or what makes a life a good life; what makes relationships ethical; what personhood is; how to understand beauty, anomaly, function, capacity, joy; what justice and equality are. (Kittay, 2002, p. 239) Such philosophical work comes from rejecting the fiction that ‘philosophy is news from nowhere’ and, instead acknowledging, ‘we’ve spoken from a position’ (Kittay, 2002, p. 240). One position that we have spoken from before – and one from which our interests in the dis/human originates – is that of post-human theory (see for example Goodley & Runswick-Cole, 2012). Now is not the time or space to capture this complex area of theory and analysis. Suffice to say, though, that those of a post-human persuasion are sceptical about the centrality of the individual in our everyday thinking. The fully functioning person as an entity psychologised, internalised, rational, autonomous and individualised self – distinct, bounded and separated from others – is a classic humanist trope. Appropriating Rosi Braidotti (2003, 2006), this categorisation of the same individual human as distinct from many monstrous Others has a number of origins, one of which is the enlightenment in which rational man emerged as victorious over irrational nature. Following Goodley (2014, p. 63) are not only valued forms of humanness found to have deep historical roots in the rise of science, rationality and capitalism, but they also have been moulded further into preferential categories (reified types of humanity) and their opposite (disposable forms of humanity). Erevelles (1996) carefully guides us through this changing relationship with humanness: [W]hen even those who espouse radical discourses seem unable to reconceptualise an alternative world without being locked into the political constructions of what constitutes appropriate humanness, then it becomes apparent that the disability movement has a task that goes above and beyond merely extending the boundaries of the discourses that celebrate humanism and instead needs to focus its energy on re-theorising itself. (p. 522) Post-human advocates are primed ready to debate humanness and the taken-for-granted assumptions that underpin such a ubiquitous though nebulous term (see Goodley et al., in press). What it means to feel human is also a matter of how one is meant to feel as a human in contemporary society. We suggest that, like post-human interventions, becoming dis/human allows us to interrogate the kinds of human currently valued by society: humankinds that are contested and directly contravened by the presence of disability. At the same time, desiring the dis/human allows us pragmatically and politically to claim the human in the lives of disabled people with intellectual disabilities. This, for us, is key to our project because of the ways in which the status of human has been and continues to be denied in the lived experiences of disabled people with intellectual disabilities.

#### Liberalism can include individuals with disabilities

Badano 13, Centre of Philosophy, Justice and Health, University of College London, London UK (Gabriele Badano, 4-23-2013, “Political liberalism and the justice claims of the disabled: a reconciliation,” https://www.tandfonline.com/doi/full/10.1080/13698230.2013.775734)

5. Revising political liberalism I: beyond Hartley’s contractualism

The aim of this section and the next is to propose a substantial revision of Rawls’s theory that accommodates the justice claims of the disabled while upholding the project of political liberalism. A question that needs to be answered at this point is: why should we uphold the project of political liberalism, rather than endorsing a different model that more neatly fits with our intuitions concerning what is due to the disabled? First, the general project of political liberalism is compelling. Rawls’s political liberalism aims to identify a common ground of political ideas that can work as the basis on which the most important political decisions should be made. This project is of the greatest importance because, if successful, it creates legitimacy by building institutions on the basis of concepts that are acceptable to each reasonable individual. Moreover, it promotes stability in societies that are characterized by deep pluralism. Second, despite Rawls’s failure to take the interests of the disabled into consideration, political liberalism is well suited to support the justice claims of individuals with disabilities. This is because the idea that the disabled are citizens who deserve our respect is part of the common culture of our societies. In other words, there is an overlapping consensus on the idea that rights, opportunities and distributive shares must be granted to individuals who are not fully cooperating members of society, including those who fall below full moral powers. It is widely believed that those with physical disabilities should have the same rights as their fellow citizens, live in a social environment that does not excessively limit their opportunities and receive benefits that help meet their special needs. Besides, although the state or third parties are given exceptional rights to interfere with the autonomy of individuals with severe cognitive disabilities, it is widely recognized that the mentally disabled are citizens whose basic interests must be protected by the law.[12](https://www.tandfonline.com/doi/full/10.1080/13698230.2013.775734) In the public space, any proposal that individuals who are not fully cooperating members of society should have their basic interests neglected would be widely received with outrage. Such proposal would be said to fit a fascist society, not a decent one. Among other legal documents, the United Nations Convention on the Rights of Persons with Disabilities (UN General Assembly, A/61/611) can be taken as the epitome of this widespread attitude. Adopted in 2006, the Convention requires that all individuals with disabilities should share in the enjoyment of equal fundamental rights.

#### The alt’s framework is fatalistic ⁠— it’s necessary for participation in political areas for disabled people in a neoliberal society

Dowse 9, (Leanne Dowse, 7-22-2009, “’Some people are never going to be able to do that.’ Challenges for people with intellectual disability in the 21st century,” Disability & Society, pp. 573-574)

The emphasis on the achievement of individual independence and productivity precipitated by globalisation and embedded in neo-liberalism effectively renders people with intellectual disability, who are often unable to attain self-sustainability, problematic. The new technologies of welfare are economically driven and actively directed toward investing in the individual pursuit of independence, framing inclusion in terms of productivity and contribution, rather than self-fulfilment or quality of life. This has differential impacts on the range of people with intellectual disability, including those who are able to participate in the employment market and those with high support needs who will not be part of the labour market. Cognitive limitations and prescribed incompetence deem at least some people with intellectual disability to be inadequate choice makers. This deficit approach presumes an incapacity to reason and results in the relinquishing of claims for justice, where equality and rights become constrained or redirected (Wasserman 2001). Perceived as unable to achieve independence, such people are then seemingly relegated to dependency relationships where they are likely to be continuously placed under protective moral custodianship whereby their ‘best interests’ are determined by more competent others. Protections which set out who can take decisions on behalf of another, under what circumstances and how this may be done are exemplified in statutory frameworks such as the UK mental capacity Act 2005 or the range of state-based guardianship legislation in the Australian context. While operating at one level to protect individuals with intellectual disability, these frameworks also contain the risk that participation in the public arena may be restricted, denied or exempt. Developments in social policy over the past half century have made progress towards improving the material conditions of people with intellectual disability by giving them access to more ‘normal’ or ‘better quality’ lives. Some approaches have also recognised, in part, the political agency of people with intellectual disability. The political project of self-advocacy has, over the past 30 years, worked to cultivate the voices and knowledges of people with intellectual disability. Access to recognition, legitimacy and participation in the political arenas where issues to do with their social management are debated continues to be complex for people with intellectual disability as a collective. A focus on the support of this representation must be a fundamental underpinning to the repositioning of people with intellectual disability in a globalised world.