# 1NC

## 1

### 1NC---K

#### Anti-black violence is a paradigmatic constant that engenders human communities. The 1AC reiterates a chronopolitical grammar of progress that secures complicity for black dereliction.

Malaklou 18, Assistant Professor of Critical Identity Studies at Beloit College, a Mellon Faculty Fellow of the Associated Colleges of the Midwest and Visiting Faculty at the Centre for Expanded Poetics in the Department of English at Concordia University in Montréal. (M. Shadee, January 2018, “‘Dilemmas’ of Coalition and the Chronopolitics of Man: Towards an Insurgent Black Feminine Otherwise”, *Theory & Event*, Volume 21, Number 1, <https://muse.jhu.edu/article/685977>)

I argue that the white supremacy Spencer evinces, in which nonblack persons of color can be contributing members of human community, reinforces the constitutive exclusion of racially black persons from the Historical frame. The rub is that Spencer is not wrong. Racially black persons cannot be-in-time because as pre-human artifacts—the trace of humanism’s race/ism or cut—they bear the weight of Man’s ontological anxieties. The promise of a universal human imago implores nonblack persons of color to make room for themselves not in a vacuum, but in an Historical world (wound) adhered by racial hierarchies, such that by activating the plasticity of racial whiteness as a human recognition, they entrench the constitutive exclusion of racially black minorities from human be(com)ing. To refuse to capitalize on this plasticity, to refuse to reproduce the antiblack sentimentality and violence of Enlightenment Europe would consent to arriving to the table of human civilization too soon—at the dawn of Man, which is how Martin characterizes the African continent—and too late, failing altogether to qualify for the recognitions and protections reserved for human subjects of a civil polity. To be sure, civil rights necessitate human recognition because “civil society” is but a placeholder for the discursive and material organization of Man (i.e., Man’s racial myths and legal categories), and because the political economy of liberal humanism is generated within and through libidinal antiblackness. The episodic and contingent violence that nonblack persons of color experience (for example, in Trump’s America) is the affective lever civil society operates to demand generalized loyalty, obscuring for nonblack minorities the choice whereby they consent to make themselves the instruments of white supremacy. The mechanism through which that loyalty is elicited is not (just) the state’s demand but liberal—libidinal—humanism’s demand for a collective, planetary distancing from and rejection of racial blackness. A white qua not-black human imago is at once the subject of Alt-Right claims to exclusivity and liberal humanism’s claims to inclusivity. Ours is a world in which those who enjoy what Frantz Fanon describes as “ontological resistance”51 (i.e., human qua white recognition) experience, in Trump’s as in Obama’s America, the ebb and flow of human community (i.e., social life), while the excommunicated, or in Wilderson’s hauntingly apt analogy for racially black persons, the “cows”52—as the raw material that makes and sustains our human world-making—are indiscriminately and senselessly, without stipulation or explanation, “accumulated and, if need be, killed,”53 in order to cohere the collective unconscious of our human community and to engender its social markers of Man. Same shit, different day I have already suggested that Trump’s simulated inclusivity betrays the continuity of the office of the American president and that his arrival to the White/Master’s House coheres and testifies to a paradigm sutured by unremarkable and interminable antiblack violence, even or especially as nonblack minority populations experience new violations in Trump’s America. The contingent and selective recognition of nonblack persons of color as white-cum-human beings absolves—gives cover to—the enduring violence whereby the black as a subject-that-is-not-one is defeated by the protections liberal humanism’s political machinery—civil society—erects to safeguard Man in his most vulnerable iterations (i.e., “worker, woman, […] gay, lesbian, and so on”). While racialized violence reduces the nonblack body (of color) to flesh, nonblack persons of color and racially black persons do not occupy comparable space-time coordinates and/or structural positionalities, because humanism’s flesh-making project or race/ism is essentially an antiblack violence. Afro-pessimism teaches us that racially black persons occupy a structural position analogous, if at all, to non-human animal beings54, which like the slave acquire value in/as death—as a meaty carcass consumable/consumed for its parts, including skin, hair,55 bones, organs, and (the story of Henrietta Lacks teaches us) cells. It is for this reason that Wilderson uses the analogy of a meat-packing plant to replace the “negro question” with the “cow question,”56 and why Sexton describes the “paradigmatic condition of black existence in the modern world” as “a perpetual and involuntary openness”57 to the tearing apart and looting of black flesh. Hortense Spillers names the hyper-vulnerability of the unsignified/unsignifiable black flesh to remain from humanism’s cut as a “hieroglyphics.” She clarifies that the “anatomical specifications of rupture” assigned to black flesh invite “the objective description of laboratory prose”58—”eyes beaten out, arms, backs, skulls branded, a left jaw, a right ankle, punctured; teeth missing, as the calculated work of iron, whips, chains, knives … the bullet.”59 Surely, this is not the representational regime of a body [End Page 226] typified by cohesion. Wilderson’s, Sexton’s, and Spillers’ interventions are Afro-pessimistic60 insofar as they dissuade the reader from holding her breath for a political metamorphosis that might finally recognize black humanity. Black fungibility like animal fungibility (perhaps too, like earth-matter fungibility61) will abate only after an epistemological catastrophe disorganizes our relational capacities and dissolves every frame of reference, obliterating the chronopolitical grammar through which those who can become Man, that is to say, who can ascend to the top of a racial hierarchy that is also or primarily a food chain, do so. Franco Barchiesi elaborates the Afro-pessimistic position to remind us that “the shift from multicultural liberalism to nationalistic supremacism” in the hour of Trump “is a change only in the form of Black subjugation.”62 Black persons categorically denied human recognition as a fact and not (just) as an inconvenience of their being “do not merely confront [the] violence”63 nonblack minority populations like immigrants, indigenous persons, and nonblack gender non-conforming persons experience as an event—for example, as a travel ban or the dismissal of marriage and bathroom rights. Rather, black Others as a people forged, Audre Lorde explains, “in the crucibles of difference,”64 are “actually constituted by [violence] through processes of depredation, coercion, and enslavement.”65 Barchiesi’s incisive reading of Wilderson’s “Gramsci’s Black Marx” (2003) makes it clear that Trump’s presidency does not qualify as an historical node, which is to say, does not signify the end of times or a new time/beginning, but rather, evidences the longue durée of black social death as a world-ordering structure, more to the point, as the structure for our be(com) ing-human. It is precisely “the inhumanity of Blackness [that] allows White humans”66 including nonblack persons of color to build institutions, ideologies of freedom, images of rights, and ethical meditations on democracy. Such political and cognitive capacities posit [black] bodies as their inert, “socially dead,” Wilderson writes, yet sentient objects, or outlets of white fantasies of coercion, improvement, imagination, violence, and healing. The inhumanity of [blackness], or the fundamental antagonism between White life and [black] death, is ultimately the condition of existence for the political conflicts, moral dilemmas, and social emergencies of civil society, as well as its aptitude to experience and narrativize history as a succession of events.67 To argue that antiblack violence is paradigmatic—a structure and a constant—is to suggest that reforms to civil society will not abate the violence black Others necessarily must endure to make civil society, more to the point, to make or conceive of a social polity—an “us”—in the first place. Wilderson’s intervention, abridged by Barchiesi to clarify our present moment as altogether typical, insists that the reorganization [End Page 227] of civil society’s parts will not de-escalate the rates at which black persons are indiscriminately maimed and murdered, because black life is not contingently fungible but essentially so, and because the metaphysics and/as metapolitics of black fungibility are not just essential for the making of a socially dead black Other. They are principally and foremost essential for the making of a non-fungible or white-passing “us”.68 The story of that be(com)ing, of a human subject that is “semantically-neurochemically” programmed to enact antiblack “individual and collective behaviors,”69 is located in the hearts and minds of those eligible for human recognition, as a libidinal economy. Insofar as Trump and his henchmen (i.e., Spencer) use liberalism’s seemingly capacious parachute to trap the rights of nonblack minority populations, they mobilize not an American nightmare but one instance in the “ongoing disaster”70 of “the social” that is mobilized by the American Dream. Trump’s hate-mongering is our price of admission not just for a model of the social organized by/as civil society, but for the making of human community (i.e., the “social”), that is to say, for epistemology and ontology itself. Recall Hartman’s argument that “the very effort to pry apart the Negro question and the social question exposes their enduring entanglements”71 as a private relation. Libidinal interests, untouchable by the law but which determine the law72, “[shape] the emergence of the social in the United States”73 as a racially unified site in which the immigrant and savage find the civil rights that correspond with human recognition. While nonblack minorities in Trump’s America are being made to experience, albeit irregularly and provisionally, what Michael Harriot describes as “the America black people have always lived in,”74 which denies human recognition to revoke civil rights, for the black Other who lives in this nowhere or “sunken place,”75 it matters not who steers the American ship. Hillary Clinton’s presidency like Barack Obama’s before hers would have (at best) activated the elasticity whereby nonblack differences (in Obama’s America, gay and trans rights especially) are accommodated by entrenching the constitutive antagonism of racial blackness (such that the hour of the first black presidency testified to the fact that black lives don’t or can’t matter).76 The violent removal of Vietnamese-American doctor and ‘model minority’77 David Dao from United Flight 3411 on April 9, 2017 serves to illustrate what Damon Young of Very Smart Brothas describes as the contingent blackification of nonblack minority populations in Trump’s America. Young resolves that Dao “wasn’t quite [black] for a day,” but that he “was definitely treated like [he was].”78 The wanton and senseless nature of Dao’s physical beating rendered his body (of color) fungible as an event, because this violence defied his treatment otherwise, for example, in Obama’s multiculturalist, ‘post-racial’ America. More specifically, Dao’s psychological suffering in the video seen ‘round the globe evokes the psychosomatic terror (pace Fanon) typical of humanism’s flesh-making project, that is to say, its anti/blackness. The absolute wretchedness whereby Dao cannot articulate his suffering, his demonstration of a “pain [he] can’t live inside of and can’t live without,”79 indeed, of a pain which he cannot signify, contain, or cathect with recourse to “the brush of discourse, or the reflexes of iconography”80 is expressed by the hopelessness with which Dao pleads with his captors to “just kill [him].” We might pause to ask why the video of Dao’s suffering captivated audiences as it did. Certainly, had Dao been black, the violation of his person would not have registered as a scandal. Videos of black suffering have the opposite effect, prompting us to stand not appalled and aghast but agape and mesmerized, chomping at the bit for (pace Hartman) more “scenes of subjection” that might (impossibly) satisfy our unabating human appetite for the flesh of the Other. In addition, scenes of black subjection function to reassure us that the human world will continue to make room for nonblack minority populations by discarding with the being of the black. Our absence from fugitive demands for black life—our sheer disregard of black fungibility, such that some of us can claim in the hour of Trump that “this is the first time [we’ve] protested anything”81—further suggests that black and nonblack minority populations do not wade through the muck and mire of racism together. Even as black persons show up to do our work, “[taking] up so many causes not immediately recognized as black,” for example, “the rights of Palestinians and Indigenous water protectors,”82 and even as nonblack minorities like Dao are violated in ways that testify to the interminability of antiblack political and (as) libidinal violence and to the consequences of that violence for nonblack persons of color, it is the black who has had to do the wading—the sinking and the dying—so that we who are not fungible can do the living.83 What is specific about and underwrites the antiblackness of this moment, if anything, is that audiences view Trump’s violence as exceptional, and in lamenting nonblack suffering in Trump’s America valorize the protections of the liberal state, obscuring its structural antiblackness.

#### Speculative political imagination re-elaborates the progress fetishization that imprisons black energy.

Warren 21, Associate Professor of African American Studies at Emory University. (Calvin, “Abandoning Time: Black Nihilism and the Democratic Imagination”, *Amerikastudien / American Studies* 66.1, pg. 247-51, Accessible at: <https://www.academia.edu/46897379/Abandoning_Time_Black_Nihilism_and_the_Democratic_Imagination?from=cover_page>)

Does time heal all wounds? Or does time require certain wounds to sustain itself? Is the curative function of time an onto-metaphysical fantasy, one concealing the internecine operations of temporal subjugation? What happens to existence, or life itself, once we abandon time, its unquestioned positivity, and its presumed givenness (as gift, indispensable resource, or a priori condition)? Furthermore, is the activity of imagining even possible without recourse to time, temporality, or its durative schemas? Is the imagination a temporal captive, and does abandoning (or dare I say abolishing) time liberate the imagination to perform different tasks and pursuits? Questioning time is a difficult task, since thinking requires it (to re-orient existence beyond Newtonian, post-modern, or neo-liberal time and eschatology). Questioning, as meta-commentary, would require an exceptional position, both within and without time simultaneously, a position capable of investigating the very thing that enables investigation—holding time in abeyance. But the seeming impossibility of this enterprise would require a different noetic apparatus, since thought (as questioning) depends on time as its oxygen. The imagination, then, offers the promise of liberation from temporal tyranny, an enterprise contravening the conditions of reason, knowledge, forms, and, indeed, the possible itself. The potential “transgression”—to use a hackneyed term in American Studies—of the imagination is diminished, however, when it is bound to democracy. Democracy tethers the imagination to time, since democracy is an elaborate schematization, instrumentalization, and defense of time. During any moment of political and social crisis, we are importuned to re-imagine democracy, as imagining the future. To consider democracy futureless, or that its time has run out, or that futurity (and progress) is its devastating temporal myth, is to open oneself up to charges of theoretical heresy, despair, hopelessness, and any other abject calumny. In times of crisis, when the authoritarian kernel of democracy is exposed, theorists call on time to hold inconsistencies, resolve contradictions, blackmail hope, and repair brokenness. Once again, we land in the terrain that “time heals all wounds,” political or otherwise. Samuel A. Chambers defines the imagination as a “synthetic power of creation and re-creation—an ability to combine the uncombinable, to surpass binaries without merely collapsing them, to fashion something new” (620). And from such synthesis, we are told that a democratic imagination is possible, since we would “think the limits (and their transgression) of democratic theory and of democracy as well” (620). Here, we see that the democratic imagination recasts limits as possibilities rather than complete failures. Limits become the resource for creation and re-creation rather than evidence of destruction and uselessness. A couture Kantianism / Hegelianism (mixed with a splash of deconstruction) salvages democracy from the perils of its absurdity, devastation, and brutality. Why this investment in democracy’s “intrinsic” creative power? Can this creativity finally bring an end to anti-Black violence and Black suffering? Or is the knowledge of democracy’s fabulousness enough to sustain Blacks through police terrorism, environmental racism, re-enslavement through incarceration, and food / housing insecurity and discrimination? I would suggest that what makes such creative synthesis possible is an unacknowledged dependence on time. For proponents of democracy, it is time that is malleable for creative enterprises of re-imagination, of progress fetishization, and an “ontology of change” that need not justify (or prove) itself, declaration of change seems to be enough (Badiou, “Ontology”). What if, however, democracy is clinging to a depleted resource? What if time is no longer enough to orient existence, especially for those inhabitants of an abyss—within which time, space, ethics, and law are weaponized against existence? Put somewhat differently, democracy has exhausted the imagination. It is a speculative vampire that drains the imagination of any vital resource for its own survival. This speculation is an outrageous expenditure of energy, an enjoyment without end, a scholarly surplus-pleasure requiring an incessant (and useless) political repetition (Johnston). I would describe this speculation—the conjoining of time, democracy, and the imagination—as an interminable quest, or a certain “stuckness” in a scene of failure (a constant encircling of political and legal vacuity). This repetition is most dramatically demonstrated, for me, in Black political participation—voting, protesting, keeping hope alive, returning to the kernel of authoritarian violence (i. e., anti-Blackness) with unbridled hope, temporal determination, and an investment in the ontology of change (Warren; Farred). Time mocks Blacks, requiring historical déjà vu to be re-imagined, redeemed, rethought, or ignored, rather than accepting time as anti-Black enmity and democracy as the permanence of anti-Blackness. Chants of “yes we can!” “your vote matters!” “we have power!” “we’re moving forward,” etc., serve to neglect the failure of Black political participation and to imprison the imagination within futurity. As I am writing these remarks, I am witnessing the absurdity of this democratic imagination and its unrelenting time. On one news program, I hear that police shot unarmed Andre Hill, a forty-seven-yearold Black resident of Columbus, Ohio, without cause, and rather than offering him medical assistance, decided to handcuff him (just in case the supine, dying man finds a gun, magically, I guess). On the other news program, I hear Black politicians importuning, begging, and guilting Blacks into voting for change. Black political pundits assure voters that the ontology of change is realizable if you just exercise your right to vote. “Never again!” “We will transform police practices!” “This time will be different!” Did Blacks not vote when police shot twelve-year-old Tamir Rice as he was playing with his toy gun on the playground? (By the way, no federal charges will be brought against the police officers who shot him). Did Blacks not vote when Sandra Bland lost her life in police custody? Did Blacks not vote after police deprived Eric Garner and George Floyd (and apparently 70 other people) of breath (Baker et al.)? In answer to my inquiry “why should we continue to vote if anti-Black violence is not changing?” I am told, “Just keep believing, we can vote people in that can change things!” When I then ask, “But I voted for President Obama (suspending my nihilism in an intoxication of hope-affect), I thought things were going to change for Blacks? I feel just as unsafe and endangered post-Obama as pre-Obama,” I am told, “Obama wasn’t a ‘magic Negro.’ He did the best he could.” Then I ask, “So why vote if it will take an act of magic to address the existential threat of anti-Blackness?” Time mocks the cyclical movement of such inquiries, they are, indeed, unanswerable within the creative, synthetic, and powerful democratic horizon. Voting becomes the premier instrument of the democratic imagination—supposedly, it activates the imagination with futurity, avoids paralysis with action, and can be repeated. What type of creativity will finally eradicate anti-Black brutality? And could such creativity even operate within time? Could we still call such creativity democracy? Must we abandon time to enable the imagination to perform the mystical, the magical, and the ineffable? If we have understood nihilism as the entrapment (and misery) of metaphysics, the reduction of Being to value circulation (axio-ontology) and Being’s forgottenness, and the neutralization of various hierarchies of existence and legitimacy (Vattimo), then Black nihilism would suggest that time is not a natural right or intrinsic resource. Time is a supreme onto-metaphysical value that traffics in anti-Black violence, subjugation, destruction, and must also be reduced to myth, fantasy, and displaced. Rather than providing the resource for creativity and power, time is a racial privilege that embeds itself in Being and metaphysics—it anchors the human and engenders extreme brutality and destructive pleasure. It is impossible, then, to de-link time from the anti-Black violence saturating it. Enterprises such as Black politics and democratic imagination reproduce the “same” rather than introducing a break in violence. Put differently, the democratic imagination takes time for granted as a natural right or unquestioned condition of existence, rather than bringing this condition under investigation and suspicion; reproducing time, as a creative and synthetic activity, is its primary preoccupation. Black existence exposes time as an unreliable lure, one vested in certain onto-metaphysical fantasies. I would add to Vittorio Possenti’s remarkable anatomizing of nihilism—theoretical, moral, theological, technological, and judicial—spatio-temporal nihilism, since both space and time provide problems for Black thinking in the abyss and demand a protocol of thinking (or imagination?) that is released from the preconditions of Being and ethics. Black nihilism de-idealizes both space and time as offering anything intrinsically or potentially transformative. Thus, the limit of space and time, for Black existence, cannot be re-worked into anything life-affirming or synthesized into anything meaningful. To put a finer point on this reflection: Anti-Blackness is a problem of time and the democratic imagination. Police shootings and COVID-19 deaths, for example, foreground the failure of time to alleviate Black suffering. Time is not curative; it is a weapon of tremendous violence. Despite the optimism of Black political theorists, time entraps Black thinking in a web of contradictions, absurdities, and impasses. The pathetic theorizing of Melvin Rogers, for example in his “Between Pain and Despair: What Ta-Nehisi Coates Is Missing,” presents an incredibly impoverished, unreliable, and inept reading of Black pessimism and the crisis of Black existence—it links democratic action to the imagination and clings to an “ontology of change” despite all evidence to the contrary in Black life. His work, however, represents a coterie of Black political optimists so ~~blinded~~ by democracy’s promise that they consider Black pain a form of political possibility. It is a perverse enterprise capitalizing on what we might call black jouissance—futurity constitutes the “temporal material” for surplus-pleasure in Black suffering, travail, and political failure. If there is any hope for the imagination and its endless circulation in contemporary Black thought, it will need to abandon time and refuse its seductions. The future is but one temporal value we must de-idealize and insert into an anti-Black will to power—one wreaking havoc across the globe. In these desperate times, Black existence needs a liberated imagination, an imagination liberated from formal thought, the world, destructive transcendence and immanence, and dogmatic preconditions. So, why continue to expend energy re-imagining the future and democracy? Let us focus Black imagining on enterprises that sustain us in the abyss. Outlining and presenting such enterprises requires tremendous spiritual and intellectual energy—but such investment is all we have.

#### Economic growth is fundamentally tied to black abjection AND a-spatiality.

Bledsoe & Wright 19, \*Adam, assistant professor in the Department of Geography and African American Studies Program at Florida State University. \*\*Willie Jamaal, assistant professor of geography at Florida State University. (“The anti-Blackness of global capital”, *Environment and Planning D: Society and Space*, Vol. 37(1), https://doi.org/10.1177/0263775818805102)

Colonial ethics reverberate in the present

The increasing globalization of capital and spatial marginalization of “superfluous” populations is fundamentally tied to the negation of Black life and assumptions of Black nonbeing. The treatment of Black lives as the embodied absence of value, or, “the very condition of existence and the determination of value,” underpins Black non-being and the assumed lack of Black cartographic capacity in the dominant spatial imaginary, making global capitalism possible (Ferreira da Silva, 2017: 1). The interconnected nature of capitalism and race is a well-worn topic. Scholars have theorized race as an ideological outgrowth of the economy (Hall, 1996); as an apparatus used to facilitate flows of people and commodities (Lowe, 2015); as a central component of capitalist maturation (James, 1989); and as a phenomenon necessary for the establishment of the world system (Robinson, 2000), among countless other approaches. Geographers, too, have unpacked the ways in which regimes of capitalism employ racialized concepts to reproduce. Geographic interrogations of racial capitalism have analyzed the role of racist assumptions in implementing neoliberal reforms in the wake of a natural disaster (Derickson, 2014); the manipulation of racial distinction to prevent labor organizing (Wilson, 2000); how resistance to Black landownership underpinned early 20th-century industrial agriculture (Williams, 2017); the role of capitalism in perpetuating environmental racism (Pulido, 2017); and the centrality of plantation relations to numerous variations of capitalism (Woods, 1998). Nonetheless, we must push further to explicate the ways in which capitalism is actually dependent on anti-Blackness to realize itself, instead of understanding anti-Black racism as a secondary effect of the economy or a phenomenon that emerges periodically. That is to say, reflections on the interlinked nature of race and capitalism must move beyond an assumption of economic causality and grapple with the ways in which anti-Blackness is actually an always-present precondition for capital accumulation. In explicating anti-Blackness, we draw on an Afro-Pessimist framework, as Afro-Pessimism makes distinct claims about the nature of Blackness in the modern world. An Afro-Pessimist analysis of antiBlackness does not treat anti-Black racism as a contingent phenomenon (Wilderson, 2011: 3–4) but rather as a global, ever-present factor that exists as the basis “for expansion and unending space within the symbolic economy of settlement” (King, 2014). Such an approach forces us to recognize how anti-Blackness punctuates the modern epoch by identifying the underlying logics that inform concrete manifestations of anti-Black racism around the world. In this way, Afro-Pessimism adds new dimensions to already-existing work on the connections between anti-Blackness and political economy by recognizing that, while capitalism exploits all of the world’s populations, it does not dominate all of them in the same way. With regard to the question of space, anti-Blackness helps us understand how the afterlife of slavery (Hartman, 2007: 6) leads to Black populations being conceptually unable to legitimately create space, thereby leaving locations associated with Blackness open to the presumably “rational” agendas of dominant spatial actors. Black populations, then, serve as the guarantor of capitalism’s need to constantly find new spaces of accumulation. In this section, we offer an explanation of how capitalism relies on anti-Blackness by foregrounding anti-Blackness as a phenomena with its own internal logics and concrete expressions. Capitalism is rooted in violent forms of captivity and murder unleashed on indigenous and Afro-descendant populations the world over (Ferreira da Silva, 2004; James, 1989; Rodney, 1972; Williams, 2014; Wynter, 1995). At its origin and in its contemporary manifestations, then, capitalism is systemically related to slavery and its various global permutations (Robinson, 2000: 313–314). The assumption that Black populations lack both humanity and “space, that is ethno- or politico-geography,” defines the treatment of enslaved Black peoples. Today, the assumed a-spatiality that defined conditions of chattel slavery continues to imprint the socio-spatial relations that reproduce global capital (Robinson, 2000: 81, 200). Black populations are deemed a-spatial as a result of the fact that modern notions of space and practices of spatial production are rooted in specific relations of power (Massey, 2005: 64, 100–101). These power relations are themselves organized around logics that have particular historical roots (Santos, 2008: 21). In the colonial epoch, chattel slavery—the social, legal, and political reduction of Africans to the status of nonhumans—produced the figure of the Black, which had a nullified spatial capacity (Wilderson, 2010: 279), was disavowed as a human being (Ferreira da Silva, 2015: 91), and was a priori structurally prevented from enacting “rational” spatial expressions (Santos, 2009: 24). Locations associated with Black populations became wholly “unhallowed” spaces, which would never receive recognition as legitimately occupied (Wynter, 1976: 81). This is not to suggest that Black peoples were or are understood as not physically present. Black bodies are certainly recognized as existing in exteriority (Raffestin, 2012: 129). Still, this recognition of physical presence does not signify that Black populations’ are understood as establishing legible space. Despite physical presence, Black populations nonetheless remain rendered “ungeographic” in dominant understandings of space (McKittrick, 2006: x). Hence, the geographic locations in which Black populations reside are treated as open to the varied agendas espoused by dominant spatial actors. Capitalism’s new rounds of accumulation require access to spaces that previously had different relations to capitalist practices. The assumed a-spatiality of Black populations often leads to purveyors of capitalism treating locations inhabited by Black people as available for emerging modes of accumulation. Put another way, spaces that were once marginal or peripheral to the perpetuation of capital accumulation become sites of appropriation precisely because the (Black) populations occupying them receive no recognition as viable spatial actors. The spaces necessary for new forms of accumulation are thus conceptually open because of this assumed a-spatiality and subsequently physically opened via the spatial removal and dispersal of Black residents. This dispersal entails violent actions that are a priori legitimate because of the assumed lack of Black spatial agency. In other words, new spaces of “investment have been mapped onto previous racial and colonial (imperial) discourses and practices” evidencing an inextricable relationship between anti-Black notions of space, capitalism’s logic of perpetual expansion, and the acceptable subordination of Black physical presence (Chakravartty and Silva, 2012: 368). This is what Frank Wilderson terms the “deterritorialisation of Black space” (2003: 238) that is necessary for accumulating capital vis-a`-vis emerging political economic practices. Katherine McKittrick similarly notes that Black geographies are cast as “the lands of no one” and “emptied out of life” in order that “suitable capitalist life-support systems” be put into place and globally propagated (McKittrick, 2013: 7). A number of present-day practices demonstrate the reliance of capital on this notion of empty, lifeless, Blackened spaces, such as capital disinvestment, white flight, gentrification, urban renewal, incarceration, and policing. These spatial arrangements identify Black peoples as inhuman and locations associated with Black populations as lacking a legitimate form of occupation and usage. Such assumptions contribute to the subordination of Black populations and spaces to dominant notions of “appropriate” uses of space, while “illegitimate” spaces of Blackness remain under siege by purveyors of capital. As this occurs, new spaces of accumulation open in areas formerly peripheral to the capitalist agenda. At the same time that these new rounds of accumulation take place, sovereign expressions of power serve to forcibly remove Black people and ensure they remain separated from these new spaces of accumulation. Subsequently, Black people are routinely harassed for existing in the communal spaces in which they have resided for generations.1 Along with public policy shifts, policing, incarceration, and extrajudicial killings simultaneously disqualify Black spatial agency and remove Black bodies from spaces deemed open for appropriation by capitalism’s purveyors, thereby simultaneously spatializing antiBlackness and reproducing global capital. The systemic casting of Black spaces as lifeless and open to appropriation for the continuation of capital breathes new life into “civil society’s political economy: [the Black body] kick-starts...capital at its genesis and rescues it from its over-accumulation crisis at its end—black death is its condition of possibility” (Wilderson, 2003: 238). Put simply, the endless accumulation of capital and its legitimating sovereign practices are, in part, made possible through the continued societal insistence on Black inhumanity and a Black lack of cartography, which casts Black spaces as empty. Hence, there exists an unquestionable connection between the colonial logics inaugurated centuries ago and today’s capitalist agenda. The lack of recognition of Black humanity underpins both projects. Early capitalism flourished thanks to the relegation of enslaved Blacks to the ontological and legal condition of non-humans on the plantations, in the forests, and in the mines of the Americas, while slaveholders and early insurance companies made fortunes off their investments in the transatlantic slave trade. Similarly, real estate speculation (Harvey, 2010), urban renewal (Perry, 2013), the roll-back of social wages (Wacquant, 2009), and the explosion of prisons (Gilmore, 2007)—all of which have allowed present-day capitalism to continue its agenda of accumulation—are only possible via the understanding of spaces inhabited by Black populations as empty and naming and treating those same populations as abject, inhuman beings. In this way, the anti-Blackness and assumed lack of Black being that originated in and defined the colonial epoch remains present with us today, despite the new material practices and justifications it takes on. Anti-Blackness remains an ever-present condition, defining the modern world. Scholars can and should look to Black thinkers and activists to help make sense of the interrelated phenomena of anti-Blackness and global capital, as Black grassroots actors explicate the linkages between these phenomena (Burton, 2015).

#### Their endorsement of tort liability Court based solutions enact violence on black bodies—It constructs and ideological view of the lawyer as superior and the client as subservient which is an enactment of violence.

Alfieri 91, Assistant Professor of Law and Director of Clinical Studies, Marquette University Law School, (Anthony, Interpretive Violence, Yale Law Journal 100 Yale L.J. 2107)

Interpretive violence is driven by three lawyer practices: marginalization, subordination, and discipline. Marginalization establishes client inferiority. Subordination entrenches inferiority in a lawyer-client hierarchy of subject-object relations. Discipline enforces hierarchy by excluding the expression of the voices of client narratives. [\*2126] The regularity of movement from marginality to subordination to discipline operates as a structural characteristic of interpretive violence. At each step, the violence is organized into a system of dominant-dependent meanings embodied in lawyer narratives. Client narratives are tolerated only to the extent they do not rupture the ordered system of meanings and relationships defined by lawyer narratives. When rupture is threatened by client resistance, n73 the lawyer engages in a series of interpretive moves to restore hierarchy by characterizing n74 client story in the vocabulary of dependence. n75 The lawyer's dependent characterization of client story is reinforced by the client's withholding of her narratives from storytelling. n76 This withholding is engendered by the lawyer but executed by the client in a strategic capitulation to the normative world projected by the lawyer's pre-understanding. While capitulation does not confirm the lawyer's narrative reading of the client's story, it does create the illusion of the rightness of his interpretation. Maintenance of this illusion upholds the results of interpretive violence as true readings of the client's story. These presumptive claims of truth inscribe client story with the narratives of lawyer dominance and client dependence. The truths are symbolized by stock descriptions of the lawyer subject and the client object. n77 Descriptions of the subject are typified by superiority, the object by inferiority. Interpretive violence is essential to the dominant-dependent order of the lawyer-client relation. Without violence, the order of discourse -- who speaks and when -- and the order of relations -- who stands above and below in decisionmaking -- fall subject to client contest and reorganization. Violence safeguards the prevailing order by endowing lawyer narrative with authoritative force. On this plane, violence is not an interpretive misstep: it is the interpretive method applied to construct and read client story. n78 Violence begins with the practice of marginalization. [\*2127] 1. Marginalization Marginalization denominates inferiority as the principal meaning and image of the client's world. The poverty lawyer deduces client inferiority from his preunderstanding of client dependency. This inference devalues client narratives, relegating the client to an inferior public status. n79 The practice of marginalization takes place in the public engagement between lawyer and client. It is discernable in legal aid offices when client speech is restricted to a sequence of short answers, in administrative hearings when client testimony is narrowly prescribed, and in courthouses when the client is excluded from conferences, arguments, and negotiations. In public narratives, the lawyer describes his client's inferiority as part of the natural order of things. Alert to the power of these narratives, the client may think it impossible to contest this designation. Unable to avail herself of the lawyer's privileged discourse, the client cannot question publicly her lawyer-designated status of inferiority notwithstanding any privately held objections. For this reason, client inferiority acquires an appearance of self-evidence in the public world of poverty law advocacy. The self-evident appearance of inferiority as a natural client trait hides the percussions of interpretive violence. The violence of marginalization is based on the alleged truth of the client's inferior status. That truth provides the rationale for the assessment of the client's incompetence to participate in the public discourse of advocacy. The poverty lawyer confirms this marginal status when he deprives the client of the opportunity to speak out in advocacy. n80 To justify that deprivation, he invokes the image of the unspeaking client. Deluded by this false imagery, the lawyer is unable to hear the testimony of empowering narratives disclosed in the client's telling of her story. Moreover, he is unable to see the events of empowerment animating the story: the image of inferiority is too consuming, the construction of the story is too settled. To refute that construction risks the lawyer's position of interpretive privilege. Fear of this loss explains why methods of investigating client narratives and revealing their power in advocacy are not counted among lawyer interpretive practices. Revelation of the client's empowering voices speaking within client story is irreconcilable with the lawyer's pre-understanding. [\*2128] Pre-understanding marginalized Mrs. Celeste in a number of ways. In the planning of her administrative hearing, I presumed Mrs. Celeste incompetent to understand the legal theory and strategy of the regulatory challenge under preparation. Thus, I did not fully include her in discussions regarding the constitutional and statutory bases of her case or the strategy of litigation designed to attack the food stamp regulations. Nor did I provide her with legal materials (e.g., statutes, regulations, legislative history, case law) to explicate my case theory and strategy. When planning escalated to pretrial strategy, once again I declined to invite Mrs. Celeste to participate in meaningful discussion, limiting communications with her to discovery preparations and brief apprisals of litigation progress. When discussion turned to Mrs. Celeste's awareness of other similarly aggrieved foster parents, I limited her participation to identification and referral of prospective plaintiffs-intervenors. Once prospective clients had been contacted and evaluated, I ended Mrs. Celeste's participation. I did not offer her an opportunity to meet and talk to the various plaintiffs-intervenors, nor did I make arrangements to allow her to visit additional foster care agencies in order to address groups of affected foster parents. Moreover, I did not invite Mrs. Celeste and the other plaintiffs collectively to attend litigation planning sessions, negotiation conferences, or federal court arguments. 2. Subordination Subordination is the second practice of interpretive violence. Like marginalization, it holds firm to the image of client dependence and inferiority. By means of subordination, the lawyer objectifies that image, transmuting the client into an object, a thing to be handled, manipulated, and remolded. n81 This practice silences client narratives of struggle by superimposing lawyer narratives. Manifested by hierarchy, subordination imposes subject-object relations between lawyer and client. Hierarchy institutionalizes the transformation of the private subject seeking help into the public object: "client." In the instant story, lawyer narratives repeatedly pictured Mrs. Celeste as an object acted upon but incapable of acting. This picture appeared in litigation team planning conferences, negotiations with co-counsel and opposing counsel, administrative hearing arguments and lines of questioning, federal district court arguments, and litigation documents (such as complaints and memoranda of law). The narratives permeating these contexts reiterated a pre-understanding of client dependence and inferiority in describing Mrs. Celeste's overlapping roles of foster parent, food stamp recipient, and client. As a foster parent, she was trained, licensed, and inspected. As a food stamp recipient, she was [\*2129] certified, budgeted, and issued benefits. As a client, she was interviewed, investigated, and counseled. In none of these roles was Mrs. Celeste seen as an independent subject with her own narratives to recite. My consignment of Mrs. Celeste to the public status of a dependent object overshadowed her experiences as an independently acting subject. Those experiences and their accompanying narratives of empowerment were discarded in the public act of subordination. When the lawyer imprints the client's story with subordinate images of dependence and inferiority, the client is inhibited from enunciating the voices of her narratives. Convinced of the truth of his rendition of the client's story, the lawyer ignores the chilling effect of his traditional narratives. The lawyer's pretense of truth mixes claims of subjective autonomy and objectivity. The claim of subjective autonomy supposes the lawyer's empathic ability to enlarge his perspective to comprehend fully the client's story. The claim of objectivity avows the lawyer's ability to verify the truth content of that story. Both claims adhere to concepts of knowledge and truth derisive of the metaphorical revelations of client voice and narrative. n82 3. Discipline Discipline is the third practice of interpretive violence. n83 Rooted in lawyer pre-understanding of client dependence and inferiority, discipline occurs when the lawyer consistently excludes from his account of client story the normative meanings embedded in client narratives. This exclusion compels client obedience to lawyer-decreed story and to lawyer-designed advocacy strategy. Alternatives in conflict with that constructed story and strategy are rejected as implausible. The expectation of client acquiescence to lawyer storytelling is intrinsic to discipline. It is unremarkable that this expectation finds proof in the image of the unspeaking client; in the intimacy of lawyer-client discourse, lawyer narratives compel silent obedience. The lawyer construes submission to those narratives as natural and true, and as freely and properly chosen by the client. The social and economic tenets of liberalism contribute to this understanding. The conception of the client as an autonomous agent acting on her own volition to form relationships in an atomistic social world embodies the social tenet. The conception of the client as a rational decisionmaker willing and able to maximize her self-interest (enjoyment, profit, utility) in a market economy exemplifies [\*2130] the economic tenet. Based on these premises, the poverty lawyer views client obedience as a free and rational choice elected by the client to maximize her well-being. n84 Client obedience is also viewed as proper for instrumental reasons of efficiency. Obedience promotes efficiency by facilitating lawyer control of the temporal and emotional aspects of legal decisionmaking. Temporal efficiency measures the time devoted to decisionmaking (for example, the mapping of alternatives), while emotional efficiency gauges the psychological energy expended (for example, the weighing of alternatives). The latter is a therapeutic estimation designed to spare the client from suffering the turmoil of selecting, evaluating, and weighing advocacy strategies. n85

#### The 1AC in anchored in a model of rational economic decision-making that’s prefigured to displace black bodies and naturalize conquest.

Hardin & Towns 19, \*Carolyn, Assistant Professor of Media and Communication & American Studies @ Miami University. \*\*Armond R., Department of Communication Studies @ The University of North Carolina at Chapel Hill. (December 2019, “Plastic Empowerment: Financial Literacy and Black Economic Life”, *American Quarterly*, Volume 71, Number 4, pg. 978-980)

Homo Economicus’s Others: Black Objects and Black Debt

One of the financial literacy programs run by the government, Money Smart, is a free “instructor-led curriculum” that can be taught in “a classroom or small group setting.”56 The curriculum covers “deposit and credit services offered by financial institutions, choosing and maintaining a checking account, spending plans, the importance of saving, how to obtain and use credit effectively, and the basics of building or repairing credit.”57 These materials, among many others, display the basic and well-established assumptions of financial literacy education: that individual financial stability requires rational calculations and decision-making. In other words, financial literacy is a normative project to bring individuals into compliance with the simplistic assumptions of economic models, or what James Kwak terms “economism.”58 As such, financial literacy acknowledges and seeks to remediate what behavioral economists have long noted: that models do not match reality because individuals do not act rationally.59 However, if individuals can be made to act rationally, optimal economic outcomes can be achieved. In other words, the purpose of financial literacy is to make each of us a well-functioning and rational “homo economicus,” the idealized subject of free market capitalism.

Financial literacy is just the latest narrative to deploy a version of homo economicus as the baseline subject of economic rationality. Although the term is said to have originated only in the nineteenth century in response to the writing of John Stuart Mill, the notion of a “proper” capitalist subject who acts correctly within various models of capitalism is much older.60 It is also a raced subject. The history of capitalism reveals that the dominant notion of economic rationality is constructed as/in a white subject over and against black bodies both as objects rather than subjects of capitalism and as intense targets of exploitative debt. This racial tension at the heart of economic rationality reveals the racial stakes of calls for financial literacy education of black consumers.

White Subject, Black Object

According to Michel Foucault, the homo economicus of the late twentieth century eschews the early political economic concern of buying and selling one’s own labor power—with all its potentially collectivist political implications—for the individualized pursuit of self-interest “as an entrepreneur of himself.”61 Foucault offers as evidence Gary Becker’s universalizing idea of “human capital.” Homo economicus is he who can solve any social problem by accumulating human capital that produces an earnings stream for the entrepreneur of himself. But this entrepreneurial self-determination is not equally accessible by all raced subjects. According to Denise Ferreira da Silva, the black is not self-determined but “outer-determined,” which is to say, always open to being “affected,” manipulated by the Western subject for his own benefit.62 The black, then, functions as one about whom choices are made, not one who makes choices.

Sylvia Wynter provides the most explicit argument of the overrepresentation of homo economicus as white within the Western construct of the human, which she argues cannot be disarticulated from capitalism. Indeed, homo economicus emerges out of the shift from the Renaissance’s conceptions of politics and Western Judeo-Christianity as signifiers of the human, what she calls “Man1,” to “Man2,” or “a figure based on the Western bourgeoisie’s model of being human that has been articulated as, since the latter half of the nineteenth century, liberal monohumanism’s homo oeconomicus.”63 Likewise, Lisa Tilley argues that Wynter’s homo economicus is a revision of a racialized humanness, “formulated within the colonial episteme’s Darwinian distortions as divided between the naturally selected (Europeans) and the naturally ‘dysselected’ (those racialized as naturally inferiority).”64 Wynter finds the origins of this shift in humanness in the “colonial matrix of power.”65 In her essay “1492,” she argues that Christopher Columbus functioned as a racialized turning point for Europe, one that replaced Western religious conceptions of knowledge, such as the world being flat, with secularized conceptions of the world.66 Further, Columbus’s voyage had as much to do with spreading Chris- tianity and glorifying the Spanish nation as it did with enriching “himself and his family with all the gold and tribute he could extort from the indigenous peoples, even from making some into cabezas de indios y indias (heads of Indian men and women), who could be sold as slaves.”67

Wynter notes that Columbus is often positioned in terms of celebratory American “discovery” in ways that brush over the colonial, nationalistic, and imperialistic implications of his individual financial aspirations and the objectification of black bodies on which those aspirations depended. Walter Mignolo follows Wynter, providing some insight into the racial foundations of homo economicus, particularly connecting it to Western colonialism and imperialism, both of which are inseparable from the post-Columbian context.68 Mignolo argues that the self-interested optimization that fleshes out the figure of homo economicus assumes coloniality and imperialism.69 In effect, Western colonial enrichment—at the expense of indigenous racial others of Europe—is already inherent in the “economic rationality” of homo economicus, as it is seen as a financially rational tool of enrichment, rather than a moral wrong.

Elsewhere Wynter claims that the proto-notion of homo economicus that circulated in the sixteenth century underwent important transformations by the nineteenth century. Further removed from Judeo-Christianity, conceptions of economic rationality in the nineteenth century functioned in raced form to articulate both black and indigenous populations in the “New World” as the epitome of economic irrationality. Wynter notes that by the nineteenth century, the black slave “would now be made into the physical referent of the ostensibly most racially inferior and non-evolved Other to Man, itself redefined as optimally homo economicus.”70 The black slave is in effect the defining opposite of homo economicus, that nonbeing who is less than human and/ or not human at all. Where homo economicus is self-interested and free to choose—the subject who can fulfill the ultimate human goal of surplus accumulation on his own—the slave is utterly removed from not only this goal but even the possibility of choosing or acting within the construct of the self.

#### Labor focus is a liberal discourse of inclusion that conceals the singularity of Black fungibility.

King 14, Assistant Professor of Women's, Gender and Sexuality Studies at Georgia State University. (Tiffany, 6-10-2014, "Labor’s Aphasia: Toward Antiblackness as Constitutive to Settler Colonialism", *Decolonization*, https://decolonization.wordpress.com/2014/06/10/labors-aphasia-toward-antiblackness-as-constitutive-to-settler-colonialism/)

For the past few weeks a convergence of social media discussions on reparations, Shona Jackson’s book Creole Indigeneity: Between Myth and Nation in the Caribbean, and her recent post “Humanity beyond the Regime of Labor,” as well as my own thinking about Black Studies’ engagement with Conquest have all compelled me to think critically about the issue of Black labor.[1] I would like to take a moment to focus on the conceptual limits of labor as an epistemic frame for thinking about Blackness (as bodies and discourse) and its relationship to settler colonialism. I am particularly concerned about the ways that Black labor may crowd out Black fungibility as a conceptual frame for thinking about Blackness within settler colonial discourses.

While many scholars who understand themselves as humanists have long ago conceded that strict or heavy-handed Marxian (political economic) analyses are generally impoverished and wanting; labor as an analytic persists. Indeed, labor as a discourse, or what Shona Jackson would call a “metaphysics” and “ontoepistemology”—a way of living and a way of articulating this mode of living— still haunts our critical theories (Jackson, 2012, p. 217).[2] This is particularly true as scholars undertake the difficult work of understanding and naming how racialized people are situated within White settler colonial states. Configuring People of Color into the calculus of settler colonial relations is onerous and in fact laborious. It is especially difficult when trying to conceptualize the unique location of Blackness. I commend scholars for taking on this task.

In order to do this cumbersome work, scholars tend to rely on the tried and true rubric of labor. Labor becomes the site and mode of incorporating non-Black and non-Indigenous people into settler colonial relations in White settler nation-states. People of Color scholars often rehearse histories of arrival as populations of coerced labor as a way of explaining their presence, as well as distance or proximity to the category of the Settler. Labor also becomes a liberal discourse that allows immigrants and migrants to narrate the terms of their belonging and citizenship within White settler colonial states. In this way, labor functions as another discourse of inclusion. Recently, Jamilah Martin in response to Ta-Nehisi Coates’ article “The Case for Reparations” made a similar and astute point in her blog post “On Reparations: Resisting Inclusion and Co-optation” that reparations work as a discourse of inclusion within the project of American Democracy within the “U.S. anti-Black settler-imperial state.” While the integrationist project of reparations may be a liberal project of inclusion, it also relies on a “teleology of modern labor” (Jackson 2012, p. 147). It holds out hope for Black inclusion into a human family of laborers/workers. Yet, despite the claim of the Black laborer as “subject”, embedded within the metaphysics of labor, the bill H.R. 40 (otherwise known as the Reparations Bill) has not gained traction.

H.R. 40’s lack of success partially speaks to the inability of Blackness to become fully legible through human categories like the laborer/worker. Further, it evinces the ways that laborer and worker do not explain the ontological state of Blackness. In Red, White and Black, Wilderson attends to the ways that Afropessimists “have gone considerable lengths to show that, point of fact, slavery is and connotes an ontological status for blackness; and that the constituent elements of slavery are not exploitation and alienation but accumulation and fungibility (Wilderson 2010, 14). The “alienation” and “exploitation” that the human worker experiences through labor are contingent conditions resulting from human conflicts.

Many people can and have occupied these temporary and conditional abased human coordinates. White, Asian and South Asian, Latina/o and Middle Eastern indentured and other kinds of laborers have long inhabited White settler territories and nation-states and, as laborers, immigrants and migrants have all helped build the settler nation. Black laboring bodies have even been used to build the settler nation. However, Black labor is just one kind of use within an open, violent and infinite repertoire of practices of making Black flesh fungible.

One way that I have explained fungibility to my undergraduate students in my course “Gender and Sexuality in the African Diaspora,” is to think about the slave owner Madame Delphine LaLaurie’s use of enslaved bodies in the FX television series, American Horror Story: Coven. LaLaurie uses Black flesh to meet uses and desires beyond those of labor and profit. She runs a torture chamber in order to satisfy lusts that include and exceed the sexual. In one episode, she murders and then uses the blood of an enslaved newborn child as an elixir that wards off the aging process. One gets a sense that the possibilities for Black flesh are unending under her ownership.

The infinite possibilities for fungible Black flesh mark a fundamental distinction between fungible slave bodies and non-Black (exploited) laboring bodies. Further, Black bodies cannot effectively be incorporated into the human category of laborers. If Black laboring bodies were incorporated into the category; “laborer” would have no meaning as a human condition.

marked

Blackness is constituted by a fungibility and accumulation that must exist outside the edge and boundary of the laborer-as-human. If there were no Black fungible and accumulable bodies there could be no “wage laborer” that cohered into a proletariat.

While labor as a discourse may work for non-Black and non-Native people of color as a way of interpellating themselves within settler colonial relations, it does not explain Black presence, Black labor or Black use in White settler nation-states. Theories that attempt to triangulate Blackness into the Settler/Native antagonism in White settler states do so by positing Blackness as the labor force that helps make the settler landscape possible.[3] It is true that Black labor literally tills, fences in and cultivates the settler’s land. However, this singular analysis both obscures the issue of Black fungibility and reduces Blackness to a mere tool of settlement rather than a constitutive element of settler colonialism’s conceptual order.

Fungibility represents a key analytic for thinking about Blackness and settler colonialism in White settler nation-states. Black fungible bodies are the conceptual and discursive fodder through which the Settler-Master can even begin to imagine or “think” spatial expansion (King, 2013). The space making practices of settler colonialism require the production of Black flesh as a fungible form of property, not just as a form of labor. In Scenes of Subjection, Saidiya Hartman argues that the enslaved embody the abstract “interchangeability and replaceability” that is endemic to the commodity (Hartman, 1997, p. 21). Beyond, the captive body’s use as labor, the Black body has a figurative and metaphorical value that extends into the realm of the discursive and symbolic. What Hartman names as the “figurative capacities of blackness,” allows the Settler-Master to conceptualize Blackness as the ultimate sign for expansion and unending space within the symbolic economy of settlement (Hartman, 1997, p. 7; and King, forthcoming). Blackness is much more than labor within both slavery’s and settler colonialism’s imaginaries.

Like Hartman, I argue that Blackness’ figurative capacity and interchangeability has a life—or afterlife—within the discursive and spatial projects of settler colonial expansion (King, forthcoming). Settler colonialism requires a symbol of infinite flux in order to animate and imagine its spatial project (King, 2013). In my dissertation, In the Clearing, I argue that Jennifer Morgan’s book Laboring Women: Women and Reproduction in New World Slavery, configures Black women as spatial agents who are [symbolically] essential to the settlement of land during the colonial period in the coastal regions of the South and the West Indies. In fact, the Black female body must be discursively constructed in order to make it possible to even conceive of planting settlements during the “first generations of settlement and slave ownership” in South Carolina and Barbados (Morgan, 2004). Morgan argues that 18th century settlement required particular symbolic constructions and particular uses of the Black female body (Morgan, 2004, p. 26).[4]

Black fungibility represents this space of discursive and conceptual possibility for settler colonial imaginaries. Black fungible bodies work beyond the metrics and “metaphysics of labor” in White settler colonial states (Jackson, 2012, p. 215). Labor becomes a limiting frame for conceptualizing Blackness on White settler colonial terrain. Reimagining Blackness and theorizing anti-Black racism on unusual landscapes requires that we rethink the usefulness of convenient and orthodox epistemic frames. We must venture beyond labor and its limits in order to think about settler colonialism’s anti-Black modalities. Fungibility and other frames deserve our attention as we continue to think about anti-Black racism, Native genocide and the US settler-slave (e)state.

#### Extinction discourse is violence that subsumes Black suffering into a monolithic conception of human collectivity.

Douglass 21, assistant professor of gender, sexuality, and feminist studies at Duke University. (Patrice D., March 2021, “Unnatural Causes: Racial Taxonomies, Pandemic, and Social Contagion”, *Prism: Theory and Modern Chinese Literature*, 18:1, pg. 262-263, https://doi.org/10.1215/25783491-8922273)

In “Blackness and the Pitfalls of Anthropocene Ethics,” Axelle Karera interrogates discourses of disaster and crisis in relation to perceptions of ecological disaster. Karera contends that analyses of the immense of disaster are predicated on an insistence on collectivity that is bolstered by racial erasure. Thus, the discussion of the Anthropocene by many theorists presupposes a Human or ecological teleological progression, together with threats of demise that ahistorically subsume Blackness into a collective form of being that is central to Black suffering. Karera argues that, “insofar as the constant recognition of our existential interdependency cannot substantially challenge the many forms of segregations on the steady rise in our current times, it seems to me that assuming the inevitability of our ontological entanglement may need some re-thinking.”24 After citing the work of Fred Moten in relation to what she calls “relationality’s inability to maintain its ethical currency when faced with the extended rupture blackness sustains on ethics,” Karera continues, “In other words, relationality is inherently not only a position that the black cannot afford or even claim. The structure of relationality is essentially the condition for the possibility of their enslavement. I wonder, therefore, whether our naïve reliance on a type of inherent co-dependence has recently done more harm than good—that is to say, has instead worked to obstruct the very possibility of a positive transformation of our ethical sensibilities.”25 According to Karera, the linking of structural relationality to the conditions of slavery is key. For Blackness, segregation, interdependency, and slavery are relational rather than legally imposed. As such, the interdependence thesis (that we are all in this together) overshadows how the social structuring of Black life and death makes the collective “we” a structurally impossible equivalency, despite the affective and emotional desire for such to be true. Integration also constitutes a problem of relationality or the lack thereof. More to the point, the constitution of “we” is a form of violence that makes the particularities of Black suffering indiscernible under the auspices of equal rights and liberties in private and public spaces. In this respect, Hartman contends that “a slippage between race and status can be detected in the uncertain identi­fi­cation of the source of black degradation,” where the locus of suf­fering is frequently underscored because of the insistence on perceiving the problem as the lack of relational congruency across races with respect to specific phenomenon like global sickness.26 Rather, the conditions of suf­fering must be scaled outward, rather than inward with a narrow focus on pandemic and disease, to address the ethical stakes at the heart of Black death. Thus, employing Karera’s “positive transformation of our ethical sensibilities” to address the conditions of Gatewood’s death requires an acknowledgment of negligence on the part of Beaumont Hospital, together with a cognitive mapping of how care, protection, and safety as conceptual frameworks isolate Blackness as an excisable contagion that is subjected to gratuitous violence that so often leads to spectacularized or muted death. By muted death, I mean forms of death produced by anti-Blackness that go unseen, unaccounted for, or unknown.

#### The alternative affirms an insurgent black feminine otherwise that disarticulates Man’s chronopolitical order.

Malaklou 18, Assistant Professor of Critical Identity Studies at Beloit College, a Mellon Faculty Fellow of the Associated Colleges of the Midwest and Visiting Faculty at the Centre for Expanded Poetics in the Department of English at Concordia University in Montréal. (M. Shadee, January 2018, “‘Dilemmas’ of Coalition and the Chronopolitics of Man: Towards an Insurgent Black Feminine Otherwise”, *Theory & Event*, Volume 21, Number 1, <https://muse.jhu.edu/article/685977>)

If Afro-pessimism is necessarily a black feminism—Wilderson explains, “Afro-pessimism is made possible by the critical labors of a particular strand of Black feminism, a la [Saidiya] Hartman and [Hortense] Spillers”137—then its critique, which elaborates “the world, and maybe even the whole possibility of and desire for a world” as the “master’s tools” of Audre Lorde’s intervention,138 arms the black feminist argument with ammunition to forge a cosmology typified not by plentitude but by lack. This cosmology is grounded not by phallic signification but by a “perpetual and involuntary openness,” which—Sexton teaches us—is “the “paradigmatic condition of black existence in the modern world.”139 The notable difference between an Afro-pessimistic approach and a black feminist one, if any, is that Afro-pessimism accepts and leans into the paradigmatic structure of black antagonism, accepting the Historical alienation that typifies social death, it bears clarifying, not as a closed door to social life but as a portal into an/Other sociality—off the record. Without a name or referent, the “elsewhere and elsewhen” of black social life, which “sprouts out of the wet places in [our] eyes…the waiting places in [our] palms, [and] the tremble holding in [our mouths],”140 finds refuge in black femininity because (pace Spillers) the immateriality of gender in the black instance does not default the metaphysics of racial blackness to phallic masculinity but to invaginated femininity. Speaking to a different audience, Lewis Gordon explains that the racially black man as (pace Spillers) the personification “female flesh ungendered” is always already feminine. He writes,

The black man is caught. He cannot reject his femininity without simultaneously rejecting his blackness, for his femininity stands as a consequence of his blackness and vice versa. Standing in front of a white [human] wall, he appears as a hole, as a gaping, feminine symbol to be filled, closed up, by the being who has being.141

Doubly penetrable as hole—as the invaginated Other of Freud’s phallocentrism and the human-animal Other Fanon describes—the black (feminine) is a figure that awaits signification interminably. Powerless to “escape concealment under the brush of discourse, or the reflexes of iconography,”142 the black (feminine) conjures Other ways of being and knowing that “can be felt and perceived even though—or especially if—[they] remain unrecognizable or unintelligible to our current common senses.”143 Excommunicated from the historical frame, the black (feminine) gives sanctuary to our freedom dreams. Hers is the safe harbor that guards black life from humanism’s thieving reach. And, as “the historical evocation of chaos”144—as (pace Fanon) an im/ possibility for time—the black (feminine) rages against the machine to disarticulate the “historical categories” that engender human be(com) ing in the first place.

In an exchange with Wilderson, Hartman summons the life and writings of Harriet A. Jacobs to claim the non-negotiable centrality of the black feminine as “the space of death, where negation is the captive’s central possibility for action.”145 Black femininity as a “content [that] exceeds […] expression”146—recall that the black (feminine) “[presents as] a virtual blank” and has no shape or meaning—models the social life of social death and is the harbinger of an occult Otherwise. That is to say, the black (feminine) is pregnant/impregnable with possibilities for a non-Historical becoming. She disarticulates the spatialization of time qua the racialization of time to “[interrupt] the habitual formation of bodies;”147 her #blackgirlmagic indexes an/Other time—a gestational time—to induce “chaos” for the record and the record-keeper alike. Following Annie Menzel’s reading of maternal generativity, the black feminine as the site of maternity—the black womb—invokes “unspeakable violence with insurgent horizon.”148 Not just void, the black feminine-cum-maternal engenders another space for living, not in-time but divested from time as the marker of forward-movement and teleological development. Hers is not the time of History (i.e., Man’s chronopolitical order), which Walter Benjamin describes as a “homogenous, empty time”149 that dialectically (re)produces “the ‘time of the now’”150 in/as the time of tomorrow—of futurity, or humanism. Rather, hers is an embryonic and gestational time, which like the slow and stalled time of captivity qua the oceanic is the insurgent and occult time of waiting/wading and wanting.151 While the birth canal, in Christina Sharpe’s pointed rendering, is a “domestic middle passage” that “[disfigures] black maternity, [turning] the womb into a factory (producing blackness as abjection much like the slave ship’s hold and the prison)” and demanding from the black mother the reproductive labor of chattel slavery—Sharpe explains that the birth canal “[ushers children] into her condition; her non-status, her non-being-ness”152—the black womb, as a container for gestation and not the vehicle for entry, specifically, as embryonic space-time suspends black life to nurture its emergent but not-yet-emerging Otherwise.

Taking inspiration from Spillers’ exhortation in “Mama’s Baby, Papa’s Maybe” (1987) to “make a place for” the black (feminine) as a “[non-Historical] social subject,” not to make room for her in “the ranks of gendered femaleness”—in humanism’s liberal folds—but to claim her “insurgent ground,”153 which Menzel describes as Spillers’ call for a “maternal temporality of continuous upheaval,”154 I submit, in closing, that the black feminine qua maternal, as Rizvana Bradley describes her, a “(w)holeness”155 that, as Toni Morrison memorably insists, “consistently [defies] classification,”156 is at once void (i.e., socially dead) and pregnant (i.e., with social life). She summons the revolution that we—all of us, black and nonblack persons (of color) alike—seek, not (just) as a salve for Trump’s violence but as the escape hatch we can use to flee the White/Master’s house, the violence of liberal humanism as the architect of chattel slavery and colonialism, and the container for human be(com)ing—History—that constrains our movements generally. To live in the space-time of the black womb’s oceanic is to be swallowed up by the infinite expanse of racial blackness. As the site of an/Other social, this embryonic space-time disarticulates Man’s chronopolitical order and is the “elsewhere and elsewhen” that we have been looking for, to date, in the wrong place—in the letter of the law of a civil society that operationalizes humanism’s race/ism. We might find our freedom instead in the black mother, who uses the resources she does not have to hold and to carry, indeed, to make life-generat-ing black poetry from the grammar of this wor(l)d’s insatiably violent antiblack prose.

**There’s no grammar to explain black suffering. Voting negative foregrounds scholarship that better articulates anti-blackness as a prerequisite to political strategizing.**

Sexton 10, Professor of African American Studies and Film and Media Studies at the University of California, Irvine. (Jared, “African American Studies”, published in *A Concise Companion to American Studies*, pg. 220-221, Blackwell Publishing Ltd)

The latter task – the trenchant interrogation of racial blackness and/in the formulations of modernity and its leitmotif of freedom – was advanced immeasurably by Professors Lindon Barrett, Denise Ferreira da Silva, and Ronald Judy, each in their own way. Yet, as Wilderson again makes plain in his Red, White, and Black (2009), the grand and anxious question of freedom is preceded, logically and ontologically, by a perhaps more confounding question: what does it mean to suffer? To address such a query sufficiently is to disregard the official impatience that envelopes it. Of course, this sentiment of expediency plays to an understandably popular urgency that emanates from the severity of everyday life for the vast majority of black people and the attendant status anxiety of the so-called new black middle class. However, black creative intellectuals have done less and less talking about our pain of late and probably a bit too much posturing about our plans. If anything, we have a surplus of plans! What we do not have is a language – much less a political culture – that adequately articulates both the variance and commonality of our positions and our predicaments. African American Studies is perhaps more inarticulate about the dimensions and details of black suffering today, in an era marked by transnationalism and multi-racialism, than it has been at any other historical juncture. I am speaking here of suffering in its fullest sense: not only as pain, which everyone experiences – say, the pain of alienation and exploitation – but also as that which blacks must bear, uniquely and singularly, that which we must stand and stand alone (see Sexton 2007).

The proposal and invitation continues:

The yield of this gathering will be to assemble leading scholars alongside emergent voices in the field of African American Studies in order to reflect critically upon the mutual implication of a proliferate and diverse racial formation with the living legacies of the black radical tradition in the age of American empire. The symposium seeks to depart from prevailing frameworks for comparative ethnic studies – that is, discerning how the respective experiences of blacks and other people of color are similar or dissimilar and what have been their historic interactions – to consider how the matrix of enslavement, which is to say the invention of “propertized human being” (Harris 1993), has not only shaped myriad forms of oppression and marginalization, but has compromised their modes of resistance and [their] claims to independence as well. If there is an overarching objective here, it is to properly illuminate what might be termed the obscurity of black suffering, to rescue it from the murky backwaters of persistent invisibility as well as the high-definition distortions of glaring and fascinated light.

Proper illumination is a catchy byline, an instance of wishful thinking, if ever there was one. But can we not speak of it more charitably, perhaps as a stratagem? Or as a spur that exercises the limits of our thinking?

In her ground-breaking Scenes of Subjection, Saidiya Hartman calls our attention to the ease with which scenes of spectacular violence against the black body – what she terms “inaugural moment[s] in the formation of the enslaved” – are reiterated in discourses both academic and popular, “the casualness,” she writes, “with which they are circulated, and the consequences of this routine display of the slave’s ravaged body”:

Rather than inciting indignation, too often they immure us to pain by virtue of their familiarity – the oft-repeated or restored character of these accounts and our distance from them are signaled by the theatrical language usually resorted to in describing these instances – and especially because they reinforce the spectacular character of black suffering. [. . .] At issue here is the precariousness of empathy and the uncertain line between witness and spectator. Only more obscene than the brutality unleashed at the whipping post is the demand that this suffering be materialized and evidenced by the display of the tortured body or endless recitations of the ghastly and terrible. In light of this, how does one give expression to these outrages without exacerbating the indifference to suffering that is the consequence of the benumbing spectacle or contend with narcissistic identification that obliterates the other or the prurience that too often is the response of such displays. (Hartman 1997: 4)

To put it bluntly, how does one engage with black suffering at all without simply erasing it – refusing it, absorbing it, appropriating it – in the very same gesture? Hartman’s inventive response to what might appear, at first glance, to be a rhetorical question or a cruel joke (that is, making a case with evidence that is, strictly speaking, inadmissible) is to move away from the expected “invocations of the shocking and the terrible” and to look, alternately, at “scenes in which terror can hardly be discerned,” “the terror of the mundane and quotidian,” what she phrases appositely as “the diffusion of terror.” What she finds, if calling it a “finding” is not immediately to betray it, is the recapitulation – the repetition and summation – of this spectacular primal scene across the entirety of the social text of racial slavery and its aftermath. That is to say, it is never the case that this terror is not present. It saturates the field of encounter. It is ubiquitous and yet it is, perhaps for the same reason, barely discernible. One wonders thus: how might the discussion of this dispersed, ambient terror become any more compelling than that which is condensed and acute? The point being not that blacks enter the wrong evidence or pursue the wrong argument, but rather that they are disallowed from entering evidence or building arguments in the first place, barred, as it were, from bringing charges and levying claims of grievance or injury as such. Again, what does it mean to suffer, in this way? This “challenge,” as Hartman modestly calls it, of giving expression to the inexpressible is taken up again in Fred Moten’s remarkable text, In the Break. In fact, it is the discrepancy between subjection and objection that launches the accomplishment of a project opened and closed around the impossibility and the inevitability of “the resistance of the object” (Moten 2003: 1). That, at least, is how it sounds to me. What is disquieting and provocative in this exchange is what I take to be a certain turning away from the implications of Hartman’s precarious distinction between witness and spectator, a positional instability that is not mitigated by transpositions in the sonic register, nor, for that matter, in the performance arts more generally (Barrett 1999; Weheliye 2005).

## CLASS ACTION ADVANTAGE

### 1NC---Criminalization Turn

#### Plan triggers criminal prosecution.

1AC Lande ’16 [Robert; Spring 2016; Venable Professor of Law at the University of Baltimore School of Law, Director of the American Antitrust Institute; Antitrust, “Class Warfare: Why Antitrust Class Actions Are Essential for Compensation and Deterrence,” vol. 30]

Nevertheless, there are good reasons to believe that the vast majority of class action cases in the Davis/Lande study involved legitimate claims. Forty-one of the 49 class actions involved allegations of collusion,16 and the same conduct supporting the settlements gave rise to criminal penalties in 20 cases; to civil relief by the FTC or DOJ in 8 cases; to civil relief by a state or other governmental unit in 9 cases; to a trial that the defendants lost and that was not overturned on appeal in 7 cases; to a class being certified in 22 cases; and to plaintiffs surviving or prevailing at summary judgment in 12 cases.17 Overall, 44 of the 49 class action suits (90 percent) exhibited at least one of these forms of legal validation as to their merits. (The 5 actions that did not have at least one of these indicia settled too early for a substantive evaluation of their merits).18

#### The criminal justice system subjects its targets to punitive psychological warfare, bodily invasion, and neglect, anchored in a legacy of enslavement that can’t be recuperated for progressive ends.

Rodríguez 10, Professor at the University of California, Riverside. (Dylan, Summer 2010, “The Disorientation of the Teaching Act: Abolition as Pedagogical Position”, *The Radical Teacher*, No. 88, pg. 7-8, https://www.jstor.org/stable/10.5406/radicalteacher.1.88.0007)

The global U.S. prison regime has no precedent or peer and has become a primary condition of schooling, education, and pedagogy in every possible site. Aside from its sheer accumulation of captive bodies (more than 2.5 million, if one includes children, military captives, undocumented migrants, and the mentally ill/disordered),1 the prison has become central to the (re)production and (re)invention of a robust and historically dynamic white supremacist state: at its farthest institutional reaches, the prison has developed a capacity to organize and disrupt the most taken-for-granted features of everyday social life, including “family,” “community,” “school,” and individual social identities. Students, teachers, and administrators of all kinds have come to conceptualize “freedom,” “safety,” and “peace” as a relatively direct outcome of state-conducted domestic war (wars on crime, drugs, gangs, immigrants, terror, etc.), legitimated police violence, and large-scale, punitive imprisonment.

In what follows, I attempt to offer the outlines of a critical analysis and schematic social theory that might be useful to two overlapping, urgent tasks of the radical teacher: 1) to better understand how the prison, along with the relations of power and normalized state violence that the prison inhabits/produces, form the everyday condition of possibility for the teaching act; and 2) to engage a historically situated abolitionist praxis that is, in this moment, primarily pedagogical.

A working conception of the “prison regime” offers a useful tool of critical social analysis as well as a theoretical framework for contextualizing critical, radical, and perhaps abolitionist pedagogies. In subtle distinction from the criminological, social scientific, and common sense understandings of “criminal justice,” “prisons/ jails,” and the “correctional system,” the notion of a prison regime focuses on three interrelated technologies and processes that are dynamically produced at the site of imprisonment: first, the prison regime encompasses the material arrangements of institutional power that create informal (and often nominally illegal) routines and protocols of militarized physiological domination over human beings held captive by the state. This domination privileges a historical anti-black state violence that is particularly traceable to the latter stages of continental racial chattel slavery and its immediate epochal aftermath in “post-emancipation” white supremacy and juridical racial segregation/apartheid—a privileging that is directly reflected in the actual demography of the imprisoned population, composed of a Black majority. The institutional elaborations of this white supremacist and anti-black carceral state create an overarching system of physiological domination that subsumes differently racialized subjects (including whites) into institutional routines (strip searching and regular bodily invasion, legally sanctioned torture, ad hoc assassination, routinized medical neglect) that revise while sustaining the everyday practices of genocidal racial slavery. While there are multiple variations on this regime of physiological dominance—including (Latino/a, Muslim, and Arab) immigrant detention, extra-territorial military prisons, and asylums—it is crucial to recognize that the genealogy of the prison’s systemic violence is anchored in the normalized Black genocide of U.S. and New World nation-building.2

### 1NC---Solvency---Courts

#### Courts circumvent.

Newman 19, University of Miami School of Law professor and a former attorney with the U.S. Department of Justice Antitrust Division. (John, 4-5-2019, "What Democratic Contenders Are Missing in the Race to Revive Antitrust", *Atlantic*, https://www.theatlantic.com/ideas/archive/2019/04/what-2020-democratic-candidates-miss-about-antitrust/586135/)

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions. But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well. No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area. Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades. But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up. Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it. If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench. Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power. Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing. And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017. Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench. Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system. There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.

### 1NC---Entrepreneurship Link

#### **Entrepreneurship redirects attention from structural racism into the minutia of bootstrapping.**

Gold 16, PhD, MA, Professor in the Department of Sociology at Michigan State University. (Steven J, “A critical race theory approach to black American entrepreneurship”, *Ethnic and Racial Studies*, 39:9, pg. 1702-1703, DOI: 10.1080/01419870.2016.1159708)---language edited, brackets

Critical race perspectives

Our discussion of racial factors brings us to the third explanation for blacks’ limited involvement in entrepreneurship – critical race theory (CRT). A growing body of theorizing and research, identified as CRT, systematic racism, [color-neutral] colourblind racism and new racism, argues that a long-term, large scale and wide ranging system of white supremacy and racial oppression continues to impact the economic life chances of blacks and other racially defined groups in American society. While not denying that blacks have experienced a degree of improvement in their lives since the pre-civil rights era, proponents of these perspectives point to a whole array of social ideologies, practices and institutions that systematically oppresses black people and assert that periods of black advancement are often reversed by economic trends, social and political movements, legal cases, government action and demographic transformations (Marable 2002; Bonilla-Silva 2003; Wingfield 2008).

CRT refers to an understanding of inequality developed by legal activists and scholars in the United States during the 1980s who were frustrated by the slow rate of change in civil rights and the inability of institutions and movements to address racial inequalities in an effective fashion. Among the basic assumptions of CRT is that the pervasiveness of racial inequality in US society means that it is accepted as normal, even by members of minority groups who are victimized by it (Ladson-Billings 1998; Ford and Airhihenbuwa 2010). ‘Unlike traditional civil rights, which stresses incrementalism and step-by-step progress, critical race theory questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law’ (Delgado and Stefancic 2012, 3).

Another assumption is that racial change generally benefits whites to a greater extent than racialized minorities. For example, more white women than minority group members have benefitted from Affirmative Action in the United States. As a diverse social and academic movement, CRT has evolved from its origins in legal studies to current applications in a variety of other fields including public health, education and economics. Originally concerned with the experience of black Americans, proponents of the perspective now address a wide range of groups, including those defined by racial, ethnic, religious, gender, class, body image, linguistic and sexual categories. Finally, CRT is often applied on a global rather than national scale (Delgado and Stefancic 2012).

Advocates of the critical race approach understand that dominant actors and movements seek to obscure the impact of racism on black progress by asserting that as a consequence of the civil rights movement, society is approaching [color-neutrality] colourblindness. Eduardo Bonilla-Silva describes this framing as [color-neutral] colourblind racism – ‘a new powerful racial ideology … that combines elements of liberalism with culturally-based antiminority views to justify the contemporary racial order’ (Bonilla-Silva 2003, 275). Because of the claimed achievements of the civil rights era, actions taken to ameliorate past injustices or current inequalities are no longer required. Instead, advocates of [color-neutrality] colourblindness encourage would-be black entrepreneurs, scholars and activists to concentrate on the minutia of business plans, loan packaging, marketing techniques and bootstrapping, rather than investigating and challenging the structural and ideological bases of racism as the best means to improve their life chances. As evidence of the supposed viability of contemporary black entrepreneurship, politicians, pundits and journalists trumpet the success of a handful of highly visible black athletes, entertainers and other media figures while ignoring the enduring record of black entrepreneurial disadvantage on the collective level (Cooper 2012; Blatt 2014; Snyder 2014). For this reason, adherents of CRT often regard mainstream academic approaches – such as the culture/psychology view and the ethnic enterprise literature – as embodying the [color-neutral] colourblind perspective that they seek to refute.

### 1NC---Sustainability---Financialization

#### Growth unsustainable---financialization.

Durand 17, He teaches Economics and Development Theories at the University of Paris 13 and the EHESS. Working within the tradition of Marxist and French Regulationist political economy, he is the author of several articles on the euro–crisis, the financialization-globalization nexus and the post-Soviet transformation. (Cédric, *Fictitious Capital: How Finance Is Appropriating Our Future*, pp. 41-44//KU-MS)

THE INTRINSIC INSTABILITY OF FINANCE

Finance markets radically differ from markets for goods and services. Whereas in normal times rising prices weaken demand in the real economy, the opposite is generally true of ﬁnancial securities: the ‘more prices increase, the more these securities are in demand. The same applies the other way around: during a crisis, the fall in prices engenders ﬁre sales, which translate into the acceleration of the price collapse. This peculiarity of ﬁnancial products derives from the fact that their purchase — dissociated from any use-value — corresponds to a purely speculative rationale; the objective is to obtain surplus-value by reselling them at a higher price at some later point. Blinded to the disaster of the inevitable reverse, agents take on more and more debt in order to buy the assets that the bubble is forming around. Moreover, the self-sustaining price rise fuelled by agents’ expectations is further exaggerated by credit. Indebtedness increases prices, and since the securities can serve as the counterpart to fresh loans, their increasing value allows agents to take on more debt. We ﬁnd this same mechanism in most speculative episodes, from the seventeenth-century Netherlands to the subprime crisis. In the former case, the speculation was on tulip bulbs; in the latter case, on residential properties.

The ﬁnancial instability hypothesis allows us to inscribe these speculation dynamics in an understanding of economic cycles. Minsky sets out from the recognition that capitalist economies experience periods of acceleration and inﬂation and periods in which they are caught in deflationary spirals in which debts become unsustainable. The 1960s and 1970s corresponded to the ﬁrst dynamic and the 1930s (paradigmatically so) to the second, as described by the economist Irving Fischer in 1933. The latter dynamic comes about when economic agents trying to meet the deadlines on their debt repayments are forced to sell what they have at discounted prices. This brings a general down- ward movement in prices and diminished revenues, and ultimately leads to a growth in the weight of debt relative to income. This in turn unleashes a self-sustaining movement toward depression, which only state intervention can interrupt.

According to Minsky, this alternation of cycles cannot be explained by the play of real macroeconomic relations alone. Following Michal Kalecki, the post-Keynesian tradition supposes that, at the macro- economic level, companies’ proﬁts ﬂow from their own investment decisions (‘the capitalists earn what they spend’). Minsky himself adopts this hypothesis, but suggests that it must be complicated by taking ﬁnancial relations into account.6 The past, present and future are linked not only by accumulated capital and labour power, but also by credit:

the inherent instability of capitalism is due to the way proﬁts depend upon investment, the validation of business debts depends upon proﬁts, and investment depends upon the availability of external ﬁnancing. But the availability of ﬁnancing presupposes that prior debts and the prices that were paid for capital assets are being val- idated by proﬁts. Capitalism is unstable because it is a ﬁnancial and accumulating system with yesterdays, todays, and tomorrows!

Credit relations are far from simple, for bankers and ﬁnancial intermediaries are capitalists like any other: since they are in competition with one another and seek to make proﬁts, they must constantly innovate. The result is a complex web of ﬁnancial mechanisms that separate the ultimate owners of wealth from the managers of the enter- prises that control and exploit this wealth. Finance’s tendency toward increased sophistication leads to three possible systems of relations between income and debts. The ﬁrst corresponds to a situation in which economic actors’ incomes cover their repayment obligations: thus ﬁnancial relations are solid and pose no problems to the overall reproduction of the economy. The second possibility is the establish- ment of speculative relations in which some economic units keep their debt rolling (they can only repay the interest, but not the principal). Such a conﬁguration produces vulnerability, and the slightest cojunctural difﬁculty risks tipping the situation into the third possibility: the development of Ponzi structures, where income ﬂows are insufficient to repay either the principal or the interest on the debt. The consequence is that indebtedness can only increase, ultimately leading to bankruptcies.

The stability of economies is largely dependent on the respective weights of these three types of ﬁnancing relations. Minsky enjoys a certain posthumous renown because he emphasised that across periods of prolonged prosperity, economies gradually evolve toward a ﬁnancing structure that makes the system unstable. Starting from a situation where ﬁnancial relations covered by incomes are predominant, they move on to a situation in which speculative ﬁnancial activities, and then Ponzi systems, become increasingly important, to the point that the insolvability of a small number of agents will end up provoking a collapse in asset prices. As Figure 2 shows, during periods of relative stability, the quest for proﬁt leads to the development of ﬁnancial innovations that accelerate credit circulation and reduce the quality of securities, which inevitably results in ﬁnancial crisis or even a crisis in the real economy. Falling asset prices and the contraction of credit feed one another: agents in ﬁnancial distress are forced to sell their holdings a whatever price they can; companies which are no longer able to obtain credit lay off staff, cut wages and lower the prices of their products; deflation leads to a growth in the weight of debts relative to less sustainable and threatens agents whose euphoric period becomes ever less sustainable and threatens agents whose economic situation had up till then seemed solid.

### 1NC---!D---Economy

#### No correlation between economic decline and war.

Walt 20, Robert and Renée Belfer professor of international relations at Harvard University. (Stephen M., 5/13/20, “Will a Global Depression Trigger Another World War?”, *Foreign Policy*, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/)

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”   
Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

### 1NC---!D---Nuclear Terrorism

#### No nuclear terrorism.

Ward 18, analyst on the Defence, Security, and Infrastructure team at RAND Europe. Citing Dr Beyza Unal, a research fellow in nuclear policy at think tank Chatham House. (Antonia, 7/27/18, "Is Nuclear Terrorism Distracting Attention from More Realistic Threats?", *RAND*, https://www.rand.org/blog/2018/07/is-the-threat-of-nuclear-terrorism-distracting-attention.html)

Despite Obama's remarks in 2016 and these two incidents, experts and officials contest the viability of the nuclear terrorism threat. Dr Beyza Unal, a research fellow in nuclear policy at think tank Chatham House, argued there is currently no evidence that terrorist groups could build a nuclear weapon. Similarly, a report by the Council on Foreign Relations in 2006 emphasized how building a nuclear bomb is a difficult task for states, let alone terrorists. This is because of the issues involved in accessing uranium and creating and maintaining it at the correct grade (enriched uranium).

While nuclear terrorism is a concern, the majority of terrorist attacks are conducted with conventional explosives. The 2017 Europol Terrorism Situation and Trend Report states that 40 percent of terrorist attacks used explosives. These explosives originate from a wide variety of countries across the world. According to a study by Conflict Armament Research, large quantities of explosive precursor chemicals used to make bombs as seen in the 7/7 attack in London in 2005 and the 2017 Manchester Arena attack, have been linked to supply chains in the United States, Europe, and Asia via Turkey. The threat from the spread of chemical precursors prompted the EU to begin looking at ways to tighten the regulations of these chemicals (PDF).

A nuclear terrorist attack would have grave consequences, but it is currently not a realistic or viable threat given that it would require a level of sophistication from terrorists that has not yet been witnessed. The recent focus of terrorist groups has been on simplistic strikes, such as knife and vehicular attacks. If countries are concerned about nuclear terrorism, the best way to mitigate this risk could be to tighten security at civilian and government nuclear sites. But governments would be better off focusing their efforts on combatting the spread and use of conventional weapons.

## PRIVATE ANTITRUST ADVANTAGE

### 1NC---Predictions Turn

#### Neg on presumption. Economic predictions about anti-trust are worse than a guess.

Rozga 20, J.D. @ BU and former FTC merger review and litigation expert (Kai, August 31st, “How tech forces a reckoning with prediction-based antitrust enforcement,” *Tech Law Decoded*, <https://techlawdecoded.com/how-tech-forces-a-reckoning-with-prediction-based-antitrust-enforcement/>, Accessed 09-12-2021)

The unproven and perhaps unprovable premise of Economism

Despite forming its foundational underpinning, the bedrock assumption in modern antitrust that lawyers supported by economic experts are capable of understanding and predicting complex markets remains unproven—if it is even provable. To the contrary, there is good reason for reserving doubt.

In Antifragile, uncertainty expert Nassim Taleb writes: “[Artificial] Man-made complex systems tend to develop cascades and runaway chains of reactions that decrease, even eliminate, predictability … the modern world may be increasing in technological knowledge, but, paradoxically, it is making things a lot more unpredictable.” Taleb is skeptical of what he calls “superfragile” predictions guided by economic theory and models which are inherently “unreliable for decision-making.” To him, “economics is like a fable—a fable writer is there to stimulate ideas, indirectly inspire practice perhaps, but certainly not to direct or determine practice.”

According to Taleb, policymaking that uses economic models to manage complex systems in a top-down fashion is bound to fragilize things—no matter how well-intentioned the intervention might be. His most poignant examples of the dangers of expert-guided prediction-making come from looking at economic policy which, in an attempt to minimize short-term gyrations in the economy and financial markets, instead sets them up for larger blow-ups with systemic consequences. He concludes that “even when an economic theory makes sense, its application cannot be imposed from a model, in a top-down manner.”

In Thinking, Fast and Slow, behavioral economist and decision-making researcher Daniel Kahnemann endorses a similar skepticism about relying on expert judgments to evaluate and make predictions about complex environments. Kahnemann summarizes research in various domains (medical, economic, etc.) finding that, due to limits and biases innate to human cognition, expert judgments amidst uncertainty and unpredictability—what he calls “low-validity” environments—are a dependably ineffective way to predict the future.

Antitrust operates in precisely the sort of environment that the works of Taleb and Kahnemann would suggest is poorly suited for subjective, predictive decision-making. The lawfulness of a merger is determined by predicting whether it will cause prices to go up, a monopolist’s abusive conduct by conjecturing whether prices were inflated over a surmised competitive level—everything heavily reliant on economic theories and models. And the fact-specific inquiry of every antitrust case—especially when any case involving dynamic tech markets—means that its practitioners never get exposed to the sort of “regularity” and “prolonged practice” that Kahnemann concludes is necessary for subjective expert judgments to acquire predictive validity. If anything, low validity is supercharged in digital markets operating in vast ecosystems of constantly-evolving and interrelated markets with complicated relationships among its players.

The works of Taleb and Kahnemann suggest that antitrust technocrats are on a fool’s errand that will result in inaccurate evaluations of market conditions and poor predictions about competitive effects. Bad competition policy will result, if for no other reason than the limits of human cognition and the complexities of the market environments being observed.

Pulling back the curtain on Economism in practice

Practitioners can also draw on their own experiences to find ample support for the skepticism that flows from the works of Taleb and Kahnemann about expert-based, predictive decision-making.

The pitfalls of Economism in antitrust can be seen in everyday practice. In merger cases, economic models are presented to predict future price increases by the merged companies. And parties looking to dodge enforcement actions in close-call cases hire economists to predict how a merger will lower costs, increase output, and improve innovation.

In private antitrust litigation, plaintiffs and defendants alike rely on armies of economists to make out the elements of a case or defend against it. Too often, the result is a series of warring expert reports submitted by uber-qualified economists with stellar reputations who—based on the exact same factual record—reach diametrically opposing positions about a market’s dynamics or likely competitive effects. Equally troubling is how the uncertainty of the expert opinions can be seen fading away by the time the court chooses a winner, as the prevailing view achieves a supreme prescience when cited by the judge in support of its decision.

Alarm bells should be going off. An academic field’s reputation would seem to be put in doubt, and with it the foundation of an influential body of law that shapes our economy and society. Instead, academics and policymakers are more likely to be heard describing the rigor and rationality that they believe neoliberal economic thinking has brought to antitrust enforcement. And while some reforms proposed by the mainstream antitrust community might seem dramatic within the existing paradigm, they are trivial when considering how none tackle the fundamental flaws of the status quo.

And so, paradoxically, as antitrust turns its focus on increasingly difficult-to-predict markets, it does so increasingly with Economism-driven prediction as its lodestar—like a captain that insists on navigating a ship with the stars even when it is obvious that clouds cover the night sky.

### 1NC---Solvency---Time/Rebound

#### Delay and firm regrowth undermine solvency.

Fukuyama et al. 21, \*Francis, Senior Fellow at Stanford University’s Freeman Spogli Institute for International Studies. \*\*Barak Richman, Katharine T. Bartlett Professor of Law and Professor of Business Administration at Duke University School of Law. \*\*\*Ashish Goel, Professor of Management Science and Engineering at Stanford University. They are members of the Working Group on Platform Scale for Stanford University’s Program on Democracy and the Internet. (January/February 2021, "How to Save Democracy From Technology", *Foreign Affairs*, https://www.foreignaffairs.com/articles/united-states/2020-11-24/fukuyama-how-save-democracy-technology)

Another approach to checking Internet platforms’ power is to promote greater competition. If there were a multiplicity of platforms, none would have the dominance enjoyed by Facebook and Google today. The problem, however, is that neither the United States nor the EU could likely break up Facebook or Google the way that Standard Oil and AT&T were broken up. Today’s technology companies would fiercely resist such an attempt, and even if they eventually lost, the process of breaking them up would take years, if not decades, to complete. Perhaps more important, it is not clear that breaking up Facebook, for example, would solve the underlying problem. There is a very good chance that a baby Facebook created by such a breakup would quickly grow to replace the parent. Even AT&T regained its dominance after being broken up

marked

in the 1980s. Social media’s rapid scalability would make that happen even faster.

### 1NC---!D---Superintelligence

#### No superintelligence---too far off, technical complexities overwhelm.

Geist 15, MacArthur Nuclear Security Fellow at Stanford University's Center for International Security and Cooperation (CISAC). Previously a Stanton Nuclear Security Fellow at the RAND Corporation, he received his doctorate in history from the University of North Carolina in 2013. (Edward Moore, 8-9-2015, "Is artificial intelligence really an existential threat to humanity?", *Bulletin of the Atomic Scientists*, https://thebulletin.org/2015/08/is-artificial-intelligence-really-an-existential-threat-to-humanity/)

Convinced that sufficient “intelligence” can overcome almost any obstacle, Bostrom acknowledges few limits on what artificial intelligences might accomplish. Engineering realities rarely enter into Bostrom’s analysis, and those that do contradict the thrust of his argument. He admits that the theoretically optimal intelligence, a “perfect Bayesian agent that makes probabilistically optimal use of available information,” will forever remain “unattainable because it is too computationally demanding to be implemented in any physical computer.” Yet Bostrom’s postulated “superintelligences” seem uncomfortably close to this ideal. The author offers few hints of how machine superintelligences would circumvent the computational barriers that render the perfect Bayesian agent impossible, other than promises that the advantages of artificial components relative to human brains will somehow save the day. But over the course of 60 years of attempts to create thinking machines, AI researchers have come to the realization that there is far more to intelligence than simply deploying a faster mechanical alternative to neurons. In fact, the history of artificial intelligence suggests that Bostrom’s “superintelligence” is a practical impossibility.

### 1NC---!D---AI Arms Race

#### No AI or autonomous weapons arms race

Kania 18, Adjunct Fellow with the technology and national security program at CNAS, (Elsa, 4/19/18, “The Pursuit of AI Is More Than an Arms Race,” https://www.defenseone.com/ideas/2018/04/pursuit-ai-more-arms-race/147579/)

However, the concept of an “arms race” is too simplistic a way to think of the coming AI revolution. To confront its challenges wisely requires reframing the current debates.

First and foremost, AI is not a weapon, nor is “artificial intelligence” a single technology but rather a catch-all concept alluding to a range of techniques with varied applications in enabling new capabilities. Just in the near term, the utility of AI in defense may include the introduction of machine learning to cyber security and operations, new techniques for cognitive electronic warfare, and the application of computer vision to analyze video and imagery (as in Project Maven), as well as enhanced logistics, predictive maintenance, and more.

Despite the active research and development underway, these technologies remain nascent and brittle enough that “fully autonomous” weapons (or even cars) are hardly imminent. Moreover, militaries – even those that care less about laws and ethics – may be unwilling to relinquish human control due to the risks.

# 2NC

## K

### 2NC---AT Extinction First

#### 3---white futurity---extinction’s non-unique, placing it in the future smooths over the ongoing black apocalypse.

Karera 19, assistant professor of philosophy and African American studies @ Wesleyan University. (Axelle, “Blackness and the Pitfalls of Anthropocene Ethics”, *Critical Philosophy of Race*, Volume 7, Issue 1, pg. 43-46)

In all their shocking glory, Summers’s remarks epitomize a pervading instrumentalization of black existence, which challenges much of the totalizing gestures of Anthropocene narratives. It is the logic intrinsic to these gestures that I have attempted to lay out thus far. Braidotti, Morton, Tuana, and even Colebrook in her incisive interventions, are unable to relinquish or effectively resist the homogenizing consequences of the discourse.42 Their respective ethical and critical prescriptions sidestep an engaged account of social antagonisms, and more specifically those enacted along racial lines. Instead, these are smoothed over and displaced in the name of an ethics of futurity grounded on a deeply naturalized variation of relationality—namely that all beings, insofar as they are earthly at least, are fundamentally interconnected and can (or must) only be perceived as such. This affirmation, as well as Braidotti’s own brand of vitalism, is not only symptomatic of a more entrenched form of historical amnesia concerning questions of culpability (i.e., how did we end up here and who is responsible). More perniciously, they appear to be yet another instantiation of Saidiya Hartman’s provocative claim that “the white bourgeois family can actually live with murder in order to reconstitute its domesticity.”43 In its most blatant form, Summers’s secret memo is precisely this! There is nothing sacrificial in his proposition; it is not about preserving the air quality that matters—so to speak—at the expense of Africans. Rather, Africa—and therefore blackness—remains the disposable trash container of the world par excellence; a case of instrumentalization in its most primitive execution. Under these conditions, one is thus pressed to inquire how can a global ethics of care44 be possible when fundamental questions of racial culpability are eluded in the name of a shortsighted conception of “becoming” and an aggrandized notion of ontological relationality—both of which remain unwilling to sustain engagements with their violent racial foundations. Indeed, in her critical essay evocatively titled “The Mattering of Black Lives: Octavia Butler’s Hyperempathy and the Promise of the New Materialism,” Diana Leong asserts that the “reduction and disavowal of race [. . .] is something of a structural necessity for the new materialisms.”45 In ways that significantly resonate with my own argument in this article, she contends that, in addition to being a discursive necessity, circumventing the race question in this discourse “enables an ethics of relation or affect that further legitimizes the reduction and dismissal of race.”46 In other words, as I have also maintained, the ontological realism that naturalizes this “hyper-ethics” of relationality can only be maintained by the concealment of systems of racial oppression.

Recall that the ethical dimension of Braidotti’s becoming-posthumanist strives for the actualization of a community-to-come unrestrained by “the guilt of ancestral communal violence, or the melancholia of unpayable ontological debts.”47 This suggests that posthumanist reconfigurations of subjectivity and its creative invention of a “future people” as solutions to our ecological demise, hinge on the forgetting of the atrocious making of “another people” by slavery and the responsibility such violent history bestows on the Western world. What remains at stake here, however, is not so much the general (and generic) recognition of the differential effects of our environmental crisis on vulnerable populations. The literature exists, and the work continues to be done.48 Rather, we must return to the structural conditions that facilitates and renders possible the “symptomatic desire to abandon race.”49

If indeed, as Leong forcefully argues, “Blackness [. . .] is the specter that haunts the Anthropocene and its possible futures,” it is imperative that we incisively revisit the conditions that make “blackened” life and death unregisterable and therefore un-grievable. And if indeed grievability and the imperative to survive constitute, as Colebrook suggests, the “we” of the Anthropocene, it behooves us to attend to those ungrievable lives for which even survival requires facing death. That is to say, those lives for which existence requires suicidal decisions such as deadly expeditions across the Mediterranean Sea, the Mexico-United States border, and the many “border-fortresses” of the EU. How can we possibly ascertain to possess an “adequate cartography of our real-life conditions,” when we continue to sidestep considering the precarity of “social practices of human embodiment,” which necessitate one to gamble with one’s own death in order to envisage the possibility of a future?50

Insofar as Tuana’s viscous porosity, Morton’s hyperobject, and Braidotti’s vitalist posthuman politics are mostly interested in giving an account of the ontological foundation of species entanglements, they cannot account for the violent foundational structures that make Summers’s indifference I mention above possible. In my opinion, this is the discursive gift that philosophical interventions in the study of anti-black racism have offered us in the past couple of decades, namely (and I quote Jared Sexton here): “A meditation on a poetics and politics of abjection wherein racial blackness operates as an asymptomtic approximation of that which disturbs every claim or formation of identity and difference as such.51 Unlike Braidotti, whose main concern is to reconfigure the boundaries of subjectivity so as to recompose, with a materialist politics of posthuman difference, a “missing people,” critical black philosophies interrogate the very foundation of becoming—of this “we” to come. In addition to its demystifying agenda, which unremittingly unsettles the self-aggrandizing gestures of Western theory, critical black philosophies consider black suffering to be a crucial site of interrogation. They question what it means to inhabit a structural position whereby by the black philosopher is always already forced to align herself with exclusionary terms in order to register antiblack violence as violence. They investigate, for instance, what using the general lexicon and terms of philosophy “insubordinately” entail for the black philosopher. What matters for this critical tradition is to assess the conditions of a world when blackness is, at last, understood to be a decisive organizing principle.

In his poignant essay “Onticide: Afro-Pessimism, Gay Nigger #1, and Surplus Violence,” Calvin Warren challenges us to think of those who fall “outside the cultural space of ethics, relationality, and the sacred.”52 In fact, he provides us with robust grounds to remain suspicious of the hasty impulses of an affirmative politics of life and relationality profoundly unequipped to recognize the mundane and persistent ways in which death and perhaps even extinction always already constitute existence for the “fungible” object/being. In this text, Warren returns to the brutal killing of Steen Keith Fenrich by his white stepfather. It is not the gruesome details surrounding Fenrich’s death that are at stake here; in the same ways the morbidly grandiose performances of anti-black violence across the globe do not necessarily hold explanatory power in and of themselves. Rather, Warren uses this story to show how the violent spectacularity of Fenrich’s death—its operation, protocols and structure - “indicate a certain ontological violation that preconditions physical injury.”53 This violence that shocks both in the simultaneity of its excessive gratuitousness and indiscriminate indifference, a violence that “exceeds the logics of utility,” to use Warren’s language, is indispensable for the constitution of the human self and necessary to maintain the coherence of its solipsistic contours and concomitant socio-political institutions.54

### 2NC---Ontology/State Good

#### Legal focus replicates a cycle of cruel optimism and empirical failures that solidify the settler state’s authority and redirect black energy from community-building to courtrooms.

Ramsey 21, J.D.-M.Div. candidate at Harvard Law School and Harvard Divinity School. (James Stevenson, “Lawyering in the Wake: Theorizing the Practice of Law in the Midst of Anti-Black Catastrophe”, 24 *Cuny L. Rev. Footnote Forum* 12, pg. 18-22)

Conversely, wake work is about paradoxically clinging to life amidst death and catastrophe. The game has been lost. There is no pre-slavery Blackness. There is no un-murdering, no un-spilling of blood. There is no available expulsion of a foreign power, as in the case of Gandhi's India, nor is there any reason to foresee or hope for a surrender of our government structures to Indigenous folk, as in Mandela's South Africa; apartheid is perfected here. Outside of worldwide upheaval, the state – this crystallized settler colony – is here to stay, as are the scars on the peoples residing in the underbelly of society, which holds up the rest of it. 30 The hold is sturdy, and those who have been disposable are still disposable; as a matter of policy, the starved in history can still be starved, the historically captured can still be captured (e.g., arrested and incarcerated), and so on. 31 What would it mean for lawyers to practice from this place of containment, from apparent defeat? Not primarily from an obligation to universal ideals or political affiliations as Delmas describes, but from a collective mourning and hunger? How might "politics" and "obligations" be recast in the wake, and how might we triage them? Starting from the first analysis of divided loyalties, how might lawyers thinking from within the wake determine the relative weights of our obligations to the law and to those on the margins? What does the law mean to us who are already always the living dead, those whose deaths make the world possible?32

As scholars and movement lawyers have long explained, a singular focus on legal remedies for the marginalized in our context has several pitfalls and other shortcomings. First, concentrating solely or even primarily on the systemic reform of the legal system and/or direct client services has not worked. To be sure, it is no longer legal, strictly speaking, to segregate schools based on race, 33 but housing and school segregation persist.34 Lynching is technically illegal, but it persists. 35 Police still kill Black people, Black children, legally and illegally. 36 Mass incarceration has been decried by some, 37 and yet prisons, along with a visceral, systemic need to punish, also persist and are levied against Black people in particular, who have always been necessarily capturable.38 Some voting rights for Black people were secured on paper,39 but they have since been both resisted in practice and rolled back formally. 40 Wealth inequality between Black people and white people has ballooned over time, and, even more harrowingly, inequalities in life expectancy between Black people and white people still exist. 41 I do not mean to dismiss the steps toward reducing these inequities that have been made through the law or by legal actors. But, as discussed earlier, these injustices are not accidents or anomalies; they are constitutive parts of the system as it currently exists, and they mean something about who in this country can (still) be hurt and stolen from and about what this country is. Appealing to such a system to change itself has not been proven effective on its own, as many scholars have observed; forms of state oppression merely shift from one form to another.42 These so-called reforms leave the violent core of the nation intact because they must; the underlying, necessary penchant for anti-Blackness and the domination of Indigenous peoples has remained as the lifeblood of the nation-state. 43

Second, along these lines, appealing to the state for relief reinscribes the state, the coercive power it uses to effectuate its ends, and our own status as Black (non)subjects. 44 As Anthony Farley explains, praying to the state for relief is to accept the power of the state to say "yes" but also its power to say "no": "To request equality is to surrender before one begins. To request equality is to grant one's owners the power to grant or deny one's request. To grant one's owners such a power is to surrender oneself to one's owners entirely and completely." 45 To recognize this power is to submit to the law's (necessary) privileging of its interests those that give it coherence and legitimacy: the erasure of Native American peoples and the infliction of perpetual suffering upon Black people as punishable, malleable, detestable flesh 46 -over our own:

To pray for legal redress is to bow before the authority of law .... Law is only the relation of white-over-black to white-over-black to white-over-black. When we follow a legal rule we follow only the track that we have ourselves laid down. In other words, we ourselves are track, we become the track when we lay down, and we follow that track white-over-black into the future that lasts forever.47

Third, as various scholars have observed, focusing on legal redress to the exclusion of other tactics and remedies, which lawyers are prone to do, has the potential to block the building of power in the communities those lawyers serve, creating serious problems in movement work.48 For example, such a focus often contains social action and energy within the domain of the courts, as opposed to building sustainable structures and practices within the community itself." There is a lurking tendency for lawyers, because of our conservative, risk-averse training, to quell radical thought and tactics-in the name of precedent and rationality-and instead bow to the law.5 Because strictly legal approaches often rely on the unique credentials, skill set, and language of lawyers, such approaches can center and empower lawyers in movement strategy, rather than empower activists and members of the community.51 A law-focused approach tempts lawyers and community members alike to conflate the lawyer's role with that of an organizer, which is problematic because lawyers and organizers tend to employ different frameworks and techniques." Our legal system tends to atomize legal disputes and claims, often forcing legal proceedings into person-against-person conflicts and making it difficult for collective legal action, coalition building, and redress of harms on a community level.53

#### Prioritize specificity---libidinal economy holds black women captive.

Douglass 18, Assistant Professor of Justice, Community, and Leadership at Saint Mary’s College of California. She received her PhD in Culture and Theory from the University of California, Irvine. (Patrice, January 2018, “Black Feminist Theory for the Dead and Dying”, *Theory & Event,* Volume 21, Number 1, <https://muse.jhu.edu/article/685972>)

The conceptual framework of women of color, I argue, similarly performs an erasure of the antagonistic relationship Black genders hold with the structuring paradigm of gender. At the level of experience women of color, as a broad association, are subjected to violence at the intersections of at least their race and gender. However, the structural positioning of Blackness blurs the lines of difference demonstrating an intimate proximity to violence that troubles the water of gender as an explanatory category.31 Andrea J. Ritchie explains how the assumption of gender transgression places women of color at an increased risk of experiencing police brutality. Ritchie argues, women framed as ‘masculine’ – including African American women, who are routinely ‘masculinized’ through systemic racial stereotypes – are consistently treated by the police as potentially violent, predatory, or noncompliant regardless of their actual conduct and circumstances, no matter how old, young, disabled, small, or ill.32 Black women here representing a convergence of supposed gender lines. The significance of this gesture by Ritchie is that is hones into the peculiar relationship between Blackness and gender. Gender here is not accounted for by how Black women identify or perform. Nor can it be taken as misrecognition of real gender by the police. Black gender occupies a position that is captive to a libidinal economy of différance.33 Theorizing the power that disorients Black gender deconstructs the assumptive logic of gender violence. What is revealed is that Black gender functions as a demarcation of difference at the level of existence. Ritchie goes on to offer a critical analysis of beliefs held by police officers that 7rely on racialized and gendered preconceptions of women of color to justify the use of force. Ritchie writes, Use of force against women of color is also uniquely informed by racialized and gendered stereotypes – officers often appear to be acting based on perceptions of Black women as “animalistic” [End Page 114] women possessing superhuman force, Latina women as “hot-tempered mamas,” Asian women as “devious,” knife-wielding martial arts experts, and so on.34 Although these descriptions are presented in a list, the assumptive framing of them are not the same. Latina and Asian women are portrayed as hypersexualized and deviant variants of womanhood, while Black women are not seen as women at all. Black women are positioned outside of the scope of humanness. Though, I would caution to suggest that the hum-animal distinction does not mark the essence of Black feminine gender. Instead the description of Black women given above situates Black identity into a void. As Zakiyyah Iman Jackson critically argues, “…at the moment when the conception of ‘the human’ was reorganized such that humanity was understood as coincident with ‘the animal,’ humane discourse relying on this new understanding simultaneously reformulated blackness as inferior to both “the human and “the animal.”35Jackson demonstrates how the animal possesses a conceptual framework in a manner Blackness is barred from. The Black, can be everything and nothing simultaneously. Blackness is gendered through violence that structures it outside of humanity and defines the perimeters of what it means to be for the Human and its discontents.36 The archive of gender is structurally anti-black. Its assumptive logic, whether explicit in its presentation or not, maintains that all women have the same gender. This orientation of thought does more than render Black gender invisible or silent. It makes it conceptually impossible to think of gender violence as orienting more than the realm of gender. Rather than engaging a politic fixated on what binds women together in life, I want to draw focus to what separates Black women in death. What creates the conditions of (im)possibility for Black women to die like Korryn Gaines? How might we augment the lens to theorize the issue of Black gender as much larger than it appears? Blackness brings into focus a paradigm of existence that rests on a gratuitous structure of violence that unhinges Black people from a possessive relation to categories of identity. Anti-black violence bleeds across demarcations of difference. When examining the contexts of Black gender, what emerges through theory is Blackness obscures the intensity and scope of violence such that Black suffering becomes indiscernible from violence experienced by others. Thus, the intimate relationship between Black gender and violence becomes a crisis for non-blacks, as this structural proximity is assumed as applicable to all. The Women’s March principles are exemplary of the transfusion of myth and reality. As Saidiya Hartman so critically poses, “How can we understand the racialized engenderment of the black female captive in terms other than deficiency or lack in relation to normative conditions and instead understand this production of gender in the context of very difference economies of power, property, kinship, race, and sexuality?”37 The implications of this provocation by Hartman are a critical lens to understanding the policing of Black women38 and the generative possibilities of theorizing gender through Blackness. So, what does the lens of Blackness offer introspections into gender? In the same respect as the proclamation by Beth E. Ritchie that is it dangerous to produce theory for all women, can the same be said for Blackness? The short answer to latter is, no. While there is no place in history where all women have stood subjected equally to violence, there is such a place for the black, the hold of the slave ship. I would like to privilege an analysis of the hold and the world produced from it as predicated on Black social and political death. The hold is marked by the putridness of unattended matter. A critical theory of Blackness rooted in the urgency and immanence of that death must attend to the specter of Black gender unhinged by a dispossessed status. As Jared Sexton posits, “The slave’s cause is the cause of another world in and on the ruins of this one, in the end of its ends.”39 Black gender as a theorem, not a thing, dismantles the predicate of gender. When gender and Blackness converge, Black people are found wavering in an ocean of violence. The core of Black feminist concerns is how to account for the gravity of gender violences that lack a proper name.

### 2NC---PDF Link

#### Check

<https://libcom.org/files/Afro-Pessimism2.pdf>

### 2NC---AT No Social Death

#### The existence of social life doesn’t negate the thesis of social death.

Sexton 12, Professor of African American Studies and Film and Media Studies at the University of California, Irvine. (Jared, “Ante-Anti-Blackness: Afterthoughts”, *Lateral*, https://csalateral.org/issue/1/ante-anti-blackness-afterthoughts-sexton/)

Elsewhere, in a discussion of W. E. B. Du Bois on the study of black folk, Gordon restates an existential phenomenological conception of the anti-black world developed across his first several books: “Blacks here suffer the phobogenic reality posed by the spirit of racial seriousness. In effect, they more than symbolize or signify various social pathologies – they become them. In our anti-black world, blacks are pathology.”46 This conception would seem to support to Moten’s contention that even much radical black studies scholarship sustains the association of blackness with a certain sense of decay and thereby fortifies and extends the interlocutory life of widely accepted political common sense. In fact, it would seem that Gordon deepens the already problematic association to the level of identity. And yet, this is precisely what Gordon argues is the value and insight of Fanon: he fully accepts the definition of himself as pathological as it is imposed by a world that knows itself through that imposition, rather than remaining in a reactive stance that insists on the heterogeneity between a self and an imago originating in culture. Though it may appear counter-intuitive, or rather because it is counter-intuitive, this acceptance or affirmation is active; it is a willing or willingness, in other words, to pay whatever social costs accrue to being black, to inhabiting blackness, to living a black social life under the shadow of social death. This is not an accommodation to the dictates of the anti-black world. The affirmation of blackness, which is to say an affirmation of pathological being, is a refusal to distance oneself from blackness in a valorization of minor differences that bring one closer to health, life, or sociality. Fanon writes in the first chapter of  Black Skin, White Masks: “A Senegalese who learns Creole to pass for Antillean is a case of alienation. The Antilleans who make a mockery out of him are lacking in judgment.”47 In a world structured by the twin axioms of white superiority and black inferiority, of white existence and black non-existence, a world structured by a negative categorical imperative—”above all, don’t be black”48—in this world, the zero degree of transformation is the turn toward blackness, a turn toward the shame, as it were, that “resides in the idea that ‘I am thought of as less than human'”49 resides in the idea that ‘I am thought of as less than human’. And yet, the very shame that floods through at that thought, a shame that, were we not human, we would have no capacity to feel, is our best internal evidence that the thought is wrong and vulgar: I feel (shame), therefore I am (human). Acknowledging the permanence of our shame, and its usefulness, may mark the beginning… [of a response to the call] to ‘begin enjoying the humor’ again. The point may not be to become individual and modern, to ever achieve a kind of prophylactic invulnerability to the [discourse] that says ‘Shame on you! Shame on you for being black!’ We do not, at this late date, need yet newer formulations of pride to negate this shame. The point may be to locate, within the transformations of our shame, a way out of scapegoating, and thus, out of the bloodletting that accompanies with such monotonous reliability our attempts to regain our innocence” (389).] In this we might create a transvaluation of pathology itself, something like an embrace of pathology without pathos.  To speak of black social life  and  black social death, black social life  against  black social death, black social life as black social death, black social life in black social death—all of this is to find oneself in the midst of an argument that is also a profound agreement, an agreement that takes shape in (between)  meconnaissance  and (dis)belief. Black optimism is not the negation of the negation that is afro-pessimism, just as black social life does not negate black social death by vitalizing it.

A living death is a much a death as it is a living. Nothing in afro-pessimism suggests that there is no black (social) life, only that black life is not social life in the universe formed by the codes of state and civil society, of citizen and subject, of nation and culture, of people and place, of history and heritage, of all the things that colonial society has in common with the colonized, of all that capital has in common with labor—the modern world system.50  Black life is not lived in the world that the world lives in, but it is lived underground, in outer space. This is agreed. That is to say, what Moten asserts against afro-pessimism is a point already affirmed by afro-pessimism, is, in fact, one of the most polemical dimensions of afro-pessimism as a project: namely, that black life is not social, or rather that black life is  lived  in social  death. Double emphasis, on lived and on death. That’s the whole point of the enterprise at some level. It is all about the implications of this agreed upon point where arguments (should) begin, but they cannot (yet) proceed.

Wilderson’s is an analysis of the law in its operation as “police power and racial prerogative both under and after slavery.”51 So too is Moten’s analysis, at least that just-less-than-half of the intellectual labor committed to the object of black studies as critique of (the anti-blackness of) Western civilization. But Moten is just that much more interested in how black social life steals away or escapes from the law, how it frustrates the police power and, in so doing, calls that very policing into being in the first place. The policing of black freedom, then, is aimed less at its dreaded prospect, apocalyptic rhetoric notwithstanding, than at its irreducible precedence. The logical and ontological priority of the unorthodox self-predicating activity of blackness, the “improvisatory exteriority” or “improvisational immanence” that blackness is, renders the law dependent upon what it polices. This is not the noble agency of resistance. It is a reticence or reluctance that we might not know if it were not pushing back, so long as we know that this pushing back is really a pushing forward. So, in this perverse sense, black social death is black social life. The object of black studies is the aim of black studies. The most radical negation of the anti-black world is the most radical affirmation of a blackened world. Afro-pessimism is “not but nothing other than” black optimism.52, 53

## CLASS ACTION ADVANTAGE

### 2NC---Turn---Overview

### 2NC---Turn---AT Reform

#### Reform fails AND entrenches the basic premises of carceral systems

De Giorgi 14, associate professor at San Jose State University, Department of Justice Studies (Alessandro, “Reform or Revolution: Thoughts on Liberal and Radical Criminologies,” *Social Justice*, 40.1/2)

The birth of criminology as a distinct form of knowledge can be broadly connected to the emergence, between the late eighteenth and mid-nineteenth centuries, of the modern liberal state (Pasquino 1980; Garland 1985,73-111; Melossi 2008, 39-64). In the context of what Foucault defined as the birth of a "governmental" form of power, characterized by a growing focus on the "welfare of the population, the improvement of its condition, the increase of its wealth, longevity, health, etc " (Foucault 1991, 100), criminology would emerge along with other "objectifying social sciences" (Dreyfus and Rabinow 1982,160-67) as a central site of produc- tion of knowledge/power about the population. The new science of crime would thus become an integral component of the broader process of rationalization of punishment initiated by the liberal state in response to the punitive excesses of the absolute state.2 Criminology would provide an essential contribution to the broader governmental project to categorize, measure, and transform the population in order to ensure its productive governance. In this sense, the production of criminological knowledge about crime and punishment could not be dissociated from the wider implementation of technologies aimed at the regulation and treatment of "social pathologies"—from epidemics to poverty, from famine to deviance. This symbiosis between mainstream criminology and the field of state power and social engineering would reach its zenith when the discipline would become integral to the regulatory practices of the welfare state. Here criminological knowledge would ensure that the social engineering technologies forged within the machinery of the welfare state (scientific management, medicalization, bureaucratization, etc.) would extend to the field of crime and its regulation. In other words, one could see mainstream liberal criminology as integral to the state's regulatory project, and its processes of knowledge production symbiotically connected (through funding streams, official appointments, commissioned research, etc.) to the practices deployed by the state to discipline individuals and govern populations inside prisons, schools, factories, mental hospitals, universities, and so on (Piatt 1974).

Radical criminology, on the other hand, has its roots outside the realm of state power and social engineering. Its genealogy can be traced instead to the social struggles coalescing around (and against) the very practices of state control that liberal criminology has historically contributed to rationalize, organize, and legitimize: correctional practices inside and outside prisons, urban policing, psychiatric treatment, medicalization, etc. In this sense, the genealogy of radical criminology, in the United States as well as in Europe and Latin America, is rooted in the social struggles of those subordinated populations—women, students, minorities, marginal workers, immigrants, prisoners, psychiatric patients, etc.—who have been the traditional target of state interventions aimed at surveillance, control, and normalization (Van Swaaningen 1997; Sudbury 2005; DeKeseredy 2011). Free from ideological commitments to (and professional linkages with) the apparatus of the welfare state, radical criminology did not limit itself to criticizing the "excesses" of the disciplinary practices implemented by the state (e.g., police brutality, excessive incarceration, abusive mental treatments, etc.), or to pushing for the "reform" of what was assumed to be an inclusive model of social citizenship, but rather questioned the very sources of the power to regulate, punish, discipline, and normalize.3

These genealogical differences are reflected in the different epistemological standpoints of the two streams of criminological thought. Mainstream liberal criminology remains epistemologically bound to the regulatory project of the state and ultimately adopts the definitions of reality (crime, deviance, pathology, abnormality, etc.) forged inside the sites of production of power/knowledge within the state, from educational institutions to prisons. This in turn leads this criminological current, even in its more critical tendencies, to privilege a focus on conjunctural elements of penal change (e.g., political cycles, public opinion, fear of crime, policymaking, correctional cultures, etc.), rather than on the *structural* geographies of power, of which the power to punish is just one element. In other words, a liberal criminological approach remains committed to the state's overall language of "crime and punishment," even as it tries to update its vocabulary through reforms that ultimately ensure the compatibility of penal practices with changing moral values and sociolegal sensibilities (see Alexander 2010). Radical criminologies, on the other hand, situate their critique outside the state-sponsored epistemology of crime and punishment, in an attempt to unveil the symbiotic relationship between the power to punish and the structural sources of social oppression (Taylor, Walton, and Young 1975; Hall et al. 1978; Davis 2003,2005).

Two examples might help illustrate this divergence. The first has to do with how liberal and radical streams within "feminist criminology" have dealt with the issue of gender violence and sexual aggression. Liberal feminist criminologists, working from an epistemological standpoint that is internal to the individualistic and retributive logic of the criminal justice system, have tended to frame the issue of violence against women not in terms of the necessity to overturn unequal relations of gender power in a sexist society, but rather in terms of a call for a stronger criminal justice intervention in defense of certain deserving victims. In other words, the target of these mobilizations was the state, which was invoked to unleash the masculine hand of the penal system to "protect" women (as individuals) against escalating levels of male violence. This position, which gradually became hegemonic within the anti-violence movement at the expense of other more radical approaches—in particular, those advanced by radical groups of women of color, who would not subscribe to a criminal justice system they had often experienced as violent, racist, and sexist—has led to a growing alignment of the mainstream antiviolence movement with the "get tough on crime" rhetoric of the 1980s and 1990s. Consequently, as Beth Richie has shown recently, although the victories of liberal feminists (and their criminological standpoint) in the area of policing and incarceration of sex offenders are undeniable, in the end the mainstream antiviolence movement has not only overlooked the structural sources of gender oppression in contemporary society, thus abdicating its original commitment to radical social change, but it has also become a formidable contributor to the ideology of mass incarceration (Richie 2012,65-98).

A second important example of the epistemological frictions between radical and liberal (or even social-democratic) variants in criminology pertains to the interpretation of the nexus between capitalism and the criminal/penal question. The connections between changing structures of capitalist production and processes of criminalization have been the focus of a significant body of sociological literature on crime and punishment (see Greenberg 1993; Melossi 1998). Liberal and radical approaches are in substantial agreement on the criminogenic effects of capitalism—identified, for example, in the prevalence of the acquisitive logic of capitalist accumulation, in the relative deprivation experienced by disadvantaged groups in society, in the anomic consequences of rapid economic change, or in the criminalization of the strategies of survival pursued by marginalized social groups. However, their understandings of the role of the penal system in this context differ significantly. Even when critical of the criminalization of the poor in an unequal society, the liberal approach continues to see the penal system as a reactive institution, as a set of practices triggered by the illegalities to which marginal populations are drawn by unequal access to material resources. In this view, crime (i.e., street crime) remains the medium between a criminogenic capitalist society and a penal apparatus that is selectively focused on the subordinated. Consequently, such a nexus can be weakened through economic reforms that by fostering inclusion within the capitalist system of production will reduce crime and punishment. From a radical perspective, by contrast, penal practices in a capitalist society are connected to the dynamics of capitalist accumulation, and they entertain a structural relationship with processes of labor exploitation and capital valorization (see Melossi and Pavarini 1981; Adamson 1984; De Giorgi 2012). Rather than being seen as a conjunctural response to the criminogenic effects of capitalism, disconnected from the processes of accumulation, penal practices are conceived as a constitutive element of capitalism. By targeting a set of disciplinary practices at the lower segments of society, the penal system contributes to perpetuating the conditions for the reproduction of a capitalist system of production—first and foremost a docile labor force that will submit to the rule of waged labor rather than incur the harsh consequences reserved for those who reject it (Rusche 1978; see infra). Thus, for example, a radical perspective on the connection between the punitive turn and the capitalist restructuring of the mid-1970s in the United States would see the draconian politics of incarceration of the last three decades not as a response to the criminogenic ef- fects of the transition from an industrial economy based on mass production and full employment to a service economy characterized by widespread precariousness, deepening social inequalities, and deteriorating working conditions; rather, a radical perspective would argue that the punitive turn was part of that transition, indeed one of its conditions of possibility (Melossi 1993; Wacquant 2009; De Giorgi 2013). Therefore, the struggle against mass incarceration and the penal complex cannot be dissociated from the broader struggle against neoliberal capitalism.

As this last point suggests, the genealogical and epistemological differences outlined above result in different strategies to transform the penal complex. Given its historical symbiosis with the regulatory institutions and practices of the modern state, as well as its focus on conjunctural reconfigurations of the penal field, a liberal approach tends to entrust enlightened power elites with the mandate to reform the system according to what liberal criminology itself suggests to be a rational or "smart" approach to crime, often framed in the new mantra of "evidence-based" policy. Gradual reforms implemented by elites and public officials from within the state apparatus appear here as the only realistic response to the penal crisis; the task of criminologists is to provide scientific evidence for the necessity and direction of those reforms from the point of view of effective crime prevention and cost reduction. On the other hand, the structural ties between radical criminologies and grassroots movements for social justice (including, but not limited to, the fields of policing, incarceration, and state repression) explain the long-standing skepticism of radical scholar-activists toward reform agendas initiated by power elites. Rather than consigning a mandate to reform the criminal justice system to the same elites who, under different historical circumstances, have contributed to the creation of the current crisis, a radical political strategy will emphasize that no meaningful penal (and social) change is possible without the direct involvement of the communities most affected by penal expansion: marginalized communities of color, the urban poor, families of the victims of mass incarceration, and so on. If the penal system (any penal system) is ultimately an apparatus for the reproduction of existing structures of power and inequality, then there is indeed no reason to believe that major reforms can be implemented by existing power elites without a radical mobilization of those at the bottom of the social structure.

### 2NC---Turn---Link

#### Their evidence says cops are good.

1AC Banicevic et al. ’18 [Anita, Gabrielle Kohlmeier, Dajena Pechersky, and Ashley Howlett; Fall 2018; Coalition of attorneys working under the technology compliance working group, including legal experts from Davies Ward Phillips & Vineberg LLP, and the working group chair; Compliance and Ethics Spotlight, “Algorithms: Challenges and Opportunities for Antitrust Compliance,” p. 8-12]

During a hearing before the Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights on October 3, 2018, Assistant Attorney General Makan Delrahim stated that the use of algorithms to create anticompetitive effects is an “important issue” that antitrust enforcers are struggling with both in the U.S. and in Europe.41 For the most part, antitrust enforcers in the U.S. agree that allegations of collusion involving algorithms should be analyzed under the same legal standards as any other collusive conduct.42 Barry Nigro, a deputy assistant attorney general in the Antitrust Division of the Department of Justice (DOJ), has reportedly stated that “when analyzing whether conduct constitutes collusion, an observer should ‘take out’ the fact that an algorithm was involved[.]”43 Nonetheless, some officials have noted that while U.S. antitrust laws generally provide the tools necessary to address anticompetitive conduct facilitated by algorithms, the use of algorithms may make it harder to identify collusion and may require antitrust enforcers to employ new investigative techniques.44 With respect to the difficulty of detecting algorithm-enabled collusion, Maureen Ohlhausen, former Acting Chairman of the FTC, has commented that, as with other types of price-fixing conduct, the DOJ’s leniency program and the threat of criminal penalties should incentivize self-detection and cooperation with enforcers where external detection is not enough.45

#### The plan results in prison time.

Waller 3, Professor and Director of the Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law (Spencer, “THE INCOHERENCE OF PUNISHMENT IN ANTITRUST,” Chicago Kent Law Review)

One would expect punishment to be the primary goal of the criminal enforcement of the antitrust laws. The Antitrust Division of the Justice Department may bring either criminal or civil actions for violations of the Sherman Act. It typically limits criminal prosecution to so-called "per se" or "hardcore" violations of section 1 of the Sherman Act such as price fixing, bid rigging, market division, or customer allocation schemes among horizontal competitors.4 1 Criminal prosecutions of other "restraints of trade" in violation of section 1 are possible but normally eschewed either for substantive antitrust policy (ambiguous or changing views of the effects on competition) or because of the impossibility of proof beyond a reasonable doubt. Criminal prosecutions under section 2 of the Sherman Act for monopolization or attempted monopolization are also possible but have not been undertaken for decades. 48 Individuals convicted of Sherman Act violations may be imprisoned for up to three years.49 Under the Federal Sentencing Guidelines, substantial prison terms are now routine, depending on the role of the individual in the unlawful conspiracy and the amount of commerce affected by the unlawful agreement.

#### Inclusion of any criminal option ensures the DOJ aggressively pursues it

Benton-Wells 11, Deputy Dean at the Melbourne Business School and a Professorial Fellow at the Melbourne Law School. She is the former Director of the University's Competition Law & Economics Network and co-Director of the Global Competition and Consumer Law Program. She is also a lay Member of the Australian Competition Tribunal. (Caron, “Criminalising Cartels: Critical Studies of an International Regulatory Movement,” Research Gate)

Competition is premised on the idea that companies act in their self-interest. Yet, self-interested corporate conduct will not always guarantee the outcomes that politicians promise and, in the process, may damage sectional interests that for reasons other than competition policy, governments are concerned to, and be seen to, protect.25 The politics of competition regulation is accentuated by the introduction of criminal sanctions. This development shifts the debate between government and the business sector from what might be seen as the value-neutral objective grounds of economic regulation, to the more value-laden and subjective grounds of what is seen as honest or fair in business dealings. It involves the government drawing a line in the sand from which it will be difficult if not impossible to retreat, regardless of future change in economic circumstance (even change occasioned by global influences beyond the government’s control). Further, having made the case for criminalisation based on the prevalence of conduct that threatens the economic fabric of society, an expectation is raised that investigations, prosecutions, convictions and jailings will follow. Yet, as many of the chapters in this book attest, such expectations may be very difficult to meet. Failure to meet expectations raised by the rhetoric of cracking down on big business carries political risk. At the same time, there is as much if not more political risk in chilling business initiative through legislation that is over-reaching and uncertain, and thereby failing to produce the economic benefits that the public expects government produce in managing the economy.26

### 2NC---Solvency---Courts

#### They’ll read down the plan---statutory codification fails.

Crane 21, Frederick Paul Furth, Sr. Professor of Law, University of Michigan. (Daniel A., “Antitrust Antitextualism”, 96 Notre Dame L. Rev. 1205, pg. 1207, Accessible at: https://scholarship.law.nd.edu/ndlr/vol96/iss3/7/)

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital.

Unlike in many debates over statutory interpretation, the issue in antitrust is not a contest between strict textualism and purposivism, including resort to legislative history.6 This Article uses “antitextualism” as a shorthand for the phenomenon of ignoring any bona fide construction of what a statute means, whether in the plain meaning of its words, linguistic or substantive interpretive canons, legislative history, or other ordinary markers of legislative meaning. Uninterested in these methods, the courts have treated the antitrust laws as a virtually unbounded delegation of common-law powers when, in important ways, the statutes quite clearly say something other than that.

#### Courts will use standing and concrete injury to block class actions

FP 21 (Fisher Phillips, “Supreme Court Reins in Out-Of-Control Class Actions: Technical Statutory Violations Insufficient to Confer Class Members’ Standing, “https://www.fisherphillips.com/news-insights/supreme-court-reigns-class-actions-technical-statutory-violations.html)

The U.S. Supreme Court just gave employers and businesses a powerful tool to fight back against those class actions seeking monetary damages where class members only experienced technical statutory violations. By a 5-to-4 vote in TransUnion v. Ramirez, the Court substantially reduced a $40 million class action jury verdict by eliminating three quarters of the class. The Court ruled that individuals who suffered purely technical violations of the Fair Credit Reporting Act’s (FCRA) procedural and notice provisions with no actual disclosures to third parties or other evidence of harm do not have standing to pursue FCRA claims despite the availability of statutory damages. What can you take away from Friday’s ruling to assist in defending class actions that threaten your business? Rare Class Jury Trial Involving Atypical Class Representative Prompts SCOTUS Review On Multiple Damages Class Issues This case caught the attention of businesses across the country after a Northern District of California jury awarded $40 million to 8,184 absent class members in a FCRA lawsuit based on the experiences of a single class representative. This was only one of a handful of occasions where a class action actually proceeded to a jury trial and reached a verdict, as opposed to dismissal or settlement, and presented a number of important issues involving standing and typicality. The Facts – Nightmare at the Car Dealership The case arose from class representative Sergio Ramirez’s experiences at a car dealership in February 2011. Mr. Ramirez went to the dealership with his wife and father-in-law to buy a new car. After negotiating the terms of the deal, the dealership ran a credit check on Mr. Ramirez and his wife. The credit report contained an alert stating that Mr. Ramirez’s name matched the names of two individuals on the Office of Foreign Assets Control’s (OFAC) list of individuals to whom businesses in the United States are not permitted to transact business due to terrorism, drug trafficking, national security, or foreign policy related reasons. Although Mr. Ramirez’s middle initial and date of birth did not match the individuals listed in the report, the dealership refused to sell the vehicle to Mr. Ramirez and ultimately only agreed to sell it to his spouse. Mr. Ramirez testified that this caused him significant embarrassment, shock, and fear, such that he even cancelled an impending vacation to Mexico out of concern over the alert and his name appearing on the OFAC’s list. After learning of the alert, Mr. Ramirez testified that he contacted TransUnion, the company that supplied the credit report. Mr. Ramirez claimed that TransUnion told him over the phone that there was no alert on his credit report. To verify this, Mr. Ramirez requested a copy of his credit report. In response, TransUnion sent Mr. Ramirez two separate mailings. The first mailing enclosed a copy of his credit report (without the OFAC alert) and including the FCRA’s mandatory “Summary of Rights” form. The second letter explained that Mr. Ramirez’s name potentially matched a name on the OFAC’s database and provided information about the OFAC list but did not include the “Summary of Rights” form. Nevertheless, Mr. Ramirez followed up with TransUnion and the company removed the alert such that it would not appear in any future disclosures. The District Court Proceedings and Trial Mr. Ramirez filed a putative class action in February of 2012 against TransUnion claiming that it violated the FCRA by failing to follow reasonable procedures to ensure that the accuracy of the OFAC alerts to avoid false-positives, disclose to the class members their entire credit reports, and provide a summary of FCRA rights enclosed with the OFAC alert correspondence to class members. The District Court ultimately certified a class that included all individuals to whom TransUnion sent the letter stating that their name was a potential match to one on the OFAC list. This included individuals who received their own credit information at home but never had their reports sent to any third parties. Specifically, out of the 8,184 class members, less than 25% (1,852) actually had a report disseminated to someone other than themselves. Additionally, no evidence was introduced that any class members besides Mr. Ramirez was ever hindered in obtaining credit. During the trial, the jury only heard Mr. Ramirez’s story. Based on Mr. Ramirez’s account, it found that TransUnion’s policies violated the FCRA. Under the FCRA, each plaintiff is entitled to statutory damages between $100 and $1,000. Here, the jury awarded each class member $984.22 in statutory damages (nearly the maximum) and $6,353.08 in punitive damages. This resulted in a total verdict of $60 million. The Appeal TransUnion appealed the verdict as well as the District Court’s Rule 23 class certification decision to the 9th Circuit Court of Appeals arguing, among other things, that the class should not have been certified. It contended that, because Mr. Ramirez’s damages claim was not typical of the class, the absent class members did not have standing as they did not suffer any concrete injuries. TransUnion also argued that the punitive damages award was too high. While the 9th Circuit reduced the punitive damages award $3,936.88 per class member, it held that the differences between the injuries suffered by Mr. Ramirez and the class did not defeat the Rule 23 typicality requirement because the underlying theories of liability for the injuries were the same. The 9th Circuit further held that each class member had standing because the alleged FCRA violations presented a material risk of harm to the privacy and reputational interests of the class as the OFAC information could have been disclosed to a potential creditor at a moment’s notice. The Supreme Court agreed to review the case on the limited issue of whether Article III of the Constitution or Federal Rule of Civil Procedure 23 permits a damages class action when the majority of the class did not suffer an injury comparable to that of the class representative. The Upshot: Availability of Statutory Damages Alone Are Insufficient To Confer Standing The Supreme Court held that the vast majority of the absent class members did not introduce sufficient evidence of Article III standing. To have standing to sue in federal court, a plaintiff must have suffered some actual or threatened concrete (injury in fact) and particularized (personal) injury. The Court once again clarified that in a class action involving damages, each member of the class must demonstrate standing and, in turn, a concrete injury. In reaching this decision, the Court concluded that Congress’s decision to make available a statutory damages remedy by itself fails to qualify as a concrete injury to confer standing. Rather, the Court reasoned that courts must be more vigilant in analyzing standing in such circumstances to ensure that plaintiffs are actually and concretely injured, rather than drawn into federal courts by the lure of statutory damages. Here, the Court held that that the class was overbroad as it included individuals who never had the OFAC alerts disclosed to third parties. The Court found that the lack of evidence of any concrete actual or imminent harm foreclosed the absent class members from recovering any damages. The Court explained that, “in cases such as these where allegedly inaccurate or misleading information sits in a company database, the plaintiffs’ harm is roughly the same, legally speaking, as if someone wrote a defamatory letter and then stored it in her desk drawer. A letter that is not sent does not harm anyone, no matter an asserted risk of future harm.” On the other hand, the Court concluded that the class members whose OFAC alerts were disclosed to third parties did suffer a concrete injury akin to reputational damage. Additionally, the Court concluded that none of the class members suffered any concrete injury just because TransUnion failed to enclose a summary of FCRA rights enclosed with the OFAC alert correspondence to class members, as it had contemporaneously provided the notice in a separate envelope along with the individual’s credit report. As the Court noted, the class members did not introduce any evidence that they failed to receive any required information or even opened the envelopes.

### 2NC---AT Durable Fiat

#### Courts will just minimize damages to excuse even prohibited behavior

Waller 3, Professor and Director of the Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law (Spencer, “THE INCOHERENCE OF PUNISHMENT IN ANTITRUST,” Chicago Kent Law Review)

Rather than reenter that debate about a phenomenon that is unlikely to change, I would like to address a different and less frequently addressed issue relating to a different form of incoherence in the present system of public and private antitrust enforcement. We have reached a point where certain conduct prohibited by the antitrust laws is indeed punished harshly, yet other violations of the laws are effectively immune from punishment because of an evolving system of government enforcement priorities, substantive changes in the standards of liabilities, and restrictive rules of standing and antitrust injury which place some violations beyond effective change. Even some per se violations of the rule are beyond the reach of any meaningful punishment. It is not that antitrust damages are necessarily too high or too low, it is that they vary dramatically and that there is no a priori way to predict where punishment in a particular case or for a particular defendant will come out. This is the real but overlooked incoherence of antitrust punishment.

### 2NC---!D---Economy

#### Countries turn inward---prefer post-COVID evidence.

Walt 20, Robert and Renée Belfer professor of international relations at Harvard University. (Stephen M., 5/13/20, “Will a Global Depression Trigger Another World War?”, *Foreign Policy*, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/)

One familiar argument is the so-called diversionary (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to divert attention from their failures by provoking a crisis with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald Trump will decide to attack a country like Iran or Venezuela in the run-up to the presidential election and especially if he thinks he’s likely to lose.

This outcome strikes me as unlikely, even if one ignores the logical and empirical flaws in the theory itself. War is always a gamble, and should things go badly—even a little bit—it would hammer the last nail in the coffin of Trump’s declining fortunes. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his staunchest supporters may wonder why he is wasting time and money going after Iran or Venezuela at a moment when thousands of Americans are dying preventable deaths at home. Even a successful military action won’t put Americans back to work, create the sort of testing-and-tracing regime that competent governments around the world have been able to implement already, or hasten the development of a vaccine. The same logic is likely to guide the decisions of other world leaders too.

Another familiar folk theory is “military Keynesianism.” War generates a lot of economic demand, and it can sometimes lift depressed economies out of the doldrums and back toward prosperity and full employment. The obvious case in point here is World War II, which did help the U.S economy finally escape the quicksand of the Great Depression. Those who are convinced that great powers go to war primarily to keep Big Business (or the arms industry) happy are naturally drawn to this sort of argument, and they might worry that governments looking at bleak economic forecasts will try to restart their economies through some sort of military adventure.

I doubt it. It takes a really big war to generate a significant stimulus, and it is hard to imagine any country launching a large-scale war—with all its attendant risks—at a moment when debt levels are already soaring. More importantly, there are lots of easier and more direct ways to stimulate the economy—infrastructure spending, unemployment insurance, even “helicopter payments”—and launching a war has to be one of the least efficient methods available. The threat of war usually spooks investors too, which any politician with their eye on the stock market would be loath to do.

Economic downturns can encourage war in some special circumstances, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value. Saddam Hussein’s decision to seize Kuwait in 1990 fits this model perfectly: The Iraqi economy was in terrible shape after its long war with Iran; unemployment was threatening Saddam’s domestic position; Kuwait’s vast oil riches were a considerable prize; and seizing the lightly armed emirate was exceedingly easy to do. Iraq also owed Kuwait a lot of money, and a hostile takeover by Baghdad would wipe those debts off the books overnight. In this case, Iraq’s parlous economic condition clearly made war more likely. Yet I cannot think of any country in similar circumstances today. Now is hardly the time for Russia to try to grab more of Ukraine—if it even wanted to—or for China to make a play for Taiwan, because the costs of doing so would clearly outweigh the economic benefits. Even conquering an oil-rich country—the sort of greedy acquisitiveness that Trump occasionally hints at—doesn’t look attractive when there’s a vast glut on the market. I might be worried if some weak and defenseless country somehow came to possess the entire global stock of a successful coronavirus vaccine, but that scenario is not even remotely possible.

#### Empirics prove---downturn causes threat deflation.

Clary 15, PhD, Assistant Professor of Political Science @ the U of Albany. (Christopher, 04/21/15, “Economic Stress and International Cooperation: Evidence from International Rivalries”, *Massachusetts Institute of Technology Political Science Department*, Research Paper No. 2015-8; pg. 4)

Why Might Economic Crisis Cause Rivalry Termination?

Economic crises lead to conciliatory behavior through five primary channels. (1) Economic crises lead to austerity pressures, which in turn incent leaders to search for ways to cut defense expenditures. (2) Economic crises also encourage strategic reassessment, so that leaders can argue to their peers and their publics that defense spending can be arrested without endangering the state. This can lead to threat deflation, where elites attempt to downplay the seriousness of the threat posed by a former rival. (3) If a state faces multiple threats, economic crises provoke elites to consider threat prioritization, a process that is postponed during periods of economic normalcy. (4) Economic crises increase the political and economic benefit from international economic cooperation. Leaders seek foreign aid, enhanced trade, and increased investment from abroad during periods of economic trouble. This search is made easier if tensions are reduced with historic rivals. (5) Finally, during crises, elites are more prone to select leaders who are perceived as capable of resolving economic difficulties, permitting the emergence of leaders who hold heterodox foreign policy views. Collectively, these mechanisms make it much more likely that a leader will prefer conciliatory policies compared to during periods of economic normalcy. This section reviews this causal logic in greater detail, while also providing historical examples that these mechanisms recur in practice.

### 2NC---!D---Nuclear Terrorism

#### Recessions don’t cause insurgent threats---COVID proves.

Davis 20, president of Insight Threat Intelligence, an international consultant on counterterrorism and intelligence, a former senior strategic analyst with the Canadian Security Intelligence Service. (Jessica, 4/28/20, "Terrorism During a Pandemic: Assessing the Threat and Balancing the Hype", *Just Security*, https://www.justsecurity.org/69895/terrorism-during-a-pandemic-assessing-the-threat-and-balancing-the-hype/)

The COVID-19 pandemic also creates mitigating conditions for the terrorist threat in much of the world. Around the globe, people are implementing physical distancing measures and, therefore, removing a significant terrorist target: crowds. Physical distancing measures make tactics such as vehicle rammings, stabbings, and bombings far less effective. Without the crowds that usually allow these relatively simple attacks to generate casualties, terrorists may determine that their plans are best perpetrated once physical distancing measures are no longer in place.

While it may be convenient to think of terrorists as relatively omnipotent, my work in counter-terrorism has demonstrated that this is far from the case. Terrorists, like everybody else, can and do get sick, as do their family and friends, creating a burden on care. At the same time, the economic devastation caused by the virus has likely left many would-be terrorists without a source of income. They may be struggling with daily subsistence, meaning devoting additional resources (both in time and money) to attack planning and weapons/component procurements may take a back seat to more immediate needs.

The intense media focus on COVID-19 may also dissuade some would-be terrorists from engaging in attacks during the pandemic. Most terrorists seek recognition for their attacks, with the ultimate goal of sowing fear in a population. This is difficult to do if no one is paying attention to you. A recent attack in France demonstrates how little media attention some attacks are generating. Even for a COVID-19 attack (involving an infected individual), this tactic also does not guarantee media attention. The reality is that anyone we come into contact with could be a virus carrier – determining responsibility would be difficult and far from instantaneous, minimizing one of terrorism’s objectives: instilling fear. This fear would also likely be mitigated by the current environment, which is one where fear is already pervasive due to the global pandemic.

#### No nuclear terrorism.

Ward 18, analyst on the Defence, Security, and Infrastructure team at RAND Europe. Citing Dr Beyza Unal, a research fellow in nuclear policy at think tank Chatham House. (Antonia, 7/27/18, "Is Nuclear Terrorism Distracting Attention from More Realistic Threats?", *RAND*, https://www.rand.org/blog/2018/07/is-the-threat-of-nuclear-terrorism-distracting-attention.html)

Despite Obama's remarks in 2016 and these two incidents, experts and officials contest the viability of the nuclear terrorism threat. Dr Beyza Unal, a research fellow in nuclear policy at think tank Chatham House, argued there is currently no evidence that terrorist groups could build a nuclear weapon. Similarly, a report by the Council on Foreign Relations in 2006 emphasized how building a nuclear bomb is a difficult task for states, let alone terrorists. This is because of the issues involved in accessing uranium and creating and maintaining it at the correct grade (enriched uranium).

While nuclear terrorism is a concern, the majority of terrorist attacks are conducted with conventional explosives. The 2017 Europol Terrorism Situation and Trend Report states that 40 percent of terrorist attacks used explosives. These explosives originate from a wide variety of countries across the world. According to a study by Conflict Armament Research, large quantities of explosive precursor chemicals used to make bombs as seen in the 7/7 attack in London in 2005 and the 2017 Manchester Arena attack, have been linked to supply chains in the United States, Europe, and Asia via Turkey. The threat from the spread of chemical precursors prompted the EU to begin looking at ways to tighten the regulations of these chemicals (PDF).

A nuclear terrorist attack would have grave consequences, but it is currently not a realistic or viable threat given that it would require a level of sophistication from terrorists that has not yet been witnessed. The recent focus of terrorist groups has been on simplistic strikes, such as knife and vehicular attacks. If countries are concerned about nuclear terrorism, the best way to mitigate this risk could be to tighten security at civilian and government nuclear sites. But governments would be better off focusing their efforts on combatting the spread and use of conventional weapons.

## PRIVATE ANTITRUST ADVANTAGE

### 2NC---Solvency---Time/Rebound

#### The plan triggers re-consolidation---empirics.

Karabell 20, WIRED contributor and president of River Twice Research. (Zachary, 1-23-2020, "Don't Break Up Big Tech", *Wired*, https://www.wired.com/story/dont-break-up-big-tech/)

The problems fueling “break them up” are valid; breaking them up is not the solution. To begin with, antitrust enforcement has been romanticized well in excess of its accomplishments. The breakup in 1984 of the monopolistic AT&T into eight companies unleashed competition for a time, lowering prices and improving services. Eventually, however, as landlines gave way to wireless, the industry reconsolidated and regulators relaxed. Today telecom is dominated by a reconstituted AT&T along with Verizon, with Sprint as a distant third (yet still immense) player. The court-mandated breakup of Standard Oil in 1911 was the culmination of the most significant antitrust action ever, but the company’s dozens of offshoots eventually recombined into massive oil companies that maintain tremendous power. (ExxonMobil and Chevron are the two most notable.) That breakup also made the wealthy Rockefeller family even wealthier, as their shares in one company became shares in many—almost all of which doubled quickly and then continued their upward trajectory from there.

It’s debatable whether antitrust enforcement has ever been particularly effective. Even a charitable reading of its legacy suggests that the first effect of disrupting Big Tech might be to enrich the oligopoly’s shareholders, which is certainly not what advocates would want. In fact, as I argued in that earlier WIRED column, industrial conglomerates often spin off businesses strategically. For instance, United Technologies is about to cut loose its multibillion-dollar divisions Otis Elevators and Carrier (one of the world’s largest HVAC companies) as a means of unlocking shareholder value. One wonders why Silicon Valley executives haven’t gone down this path; perhaps the mantras of integration and a hubristic belief that they will never actually be forced to break up has shut down consideration of those strategies.

Would a forced breakup at least be effective at dispersing power? Let’s say that Facebook were strong-armed into disassembling itself. Its logical components would be legacy Facebook (individual pages), Facebook for business, Instagram, WhatsApp, and Oculus. You might be able to slice it even thinner, but assume Facebook would become five companies. Facebook currently has a market capitalization of just over $600 billion. That total market cap wouldn’t be divided equally among the five new companies; WhatsApp might struggle given its lack of discernible income, while Instagram might soar. It’s likely, however, that the resulting businesses would have a combined valuation greater than $600 billion, assuming it follows past patterns and that the tech industry remains robust.

Now imagine each of the Big Tech giants gets disassembled in this way. We might end up with a landscape of 30 companies instead of half a dozen. A quintupling of industry players would, by definition, create a more competitive field. But competition in the antitrust framework, stretching back to the original Sherman Anti-Trust Bill in 1890 and then subsequent legislation such as the Clayton Bill in 1914, is not a virtue or need in and of itself. It is the means to a set of ends—namely, “economic liberty,” unfettered trade, lower prices, and better services for consumers. By itself, competition does not guarantee anything.

Meanwhile, it’s hard to see how going from six companies to 30 would give consumers any more choice of services or more control over their data, or how it would help to nurture small businesses and lower costs to consumers and society. Perhaps there would be openings for companies with different business models, ones that brand themselves as valuing privacy and empowering individual ownership of data. This can’t be ruled out, but the nature of data selling and data mining is so embedded in the current models of most IT companies that it is very hard to see how such businesses could thrive unless they charged more to consumers than consumers have so far been willing to pay. In the meantime, the 30 new megacompanies would still have immense competitive advantages over smaller startups.

Would the market frictions and disruptions caused by a breakup be worth the possibility that such privacy-focused companies might succeed? Would cracking the current megacompanies into a set of slightly smaller ones effectively balance consumer needs and economic liberty? You may need to break eggs to make an omelet, but breaking eggs alone doesn’t make one.

### 2NC---!D---AI Arms Race

#### No AI or autonomous weapons arms race

Kania 18, Adjunct Fellow with the technology and national security program at CNAS, (Elsa, 4/19/18, “The Pursuit of AI Is More Than an Arms Race,” https://www.defenseone.com/ideas/2018/04/pursuit-ai-more-arms-race/147579/)

However, the concept of an “arms race” is too simplistic a way to think of the coming AI revolution. To confront its challenges wisely requires reframing the current debates.

First and foremost, AI is not a weapon, nor is “artificial intelligence” a single technology but rather a catch-all concept alluding to a range of techniques with varied applications in enabling new capabilities. Just in the near term, the utility of AI in defense may include the introduction of machine learning to cyber security and operations, new techniques for cognitive electronic warfare, and the application of computer vision to analyze video and imagery (as in Project Maven), as well as enhanced logistics, predictive maintenance, and more.

Despite the active research and development underway, these technologies remain nascent and brittle enough that “fully autonomous” weapons (or even cars) are hardly imminent. Moreover, militaries – even those that care less about laws and ethics – may be unwilling to relinquish human control due to the risks.

### 2NC---Predictions Turn

#### Neg on presumption. Economic predictions about anti-trust are worse than a guess.

Rozga 20, J.D. @ BU and former FTC merger review and litigation expert (Kai, August 31st, “How tech forces a reckoning with prediction-based antitrust enforcement,” *Tech Law Decoded*, <https://techlawdecoded.com/how-tech-forces-a-reckoning-with-prediction-based-antitrust-enforcement/>, Accessed 09-12-2021)

The unproven and perhaps unprovable premise of Economism

Despite forming its foundational underpinning, the bedrock assumption in modern antitrust that lawyers supported by economic experts are capable of understanding and predicting complex markets remains unproven—if it is even provable. To the contrary, there is good reason for reserving doubt.

In Antifragile, uncertainty expert Nassim Taleb writes: “[Artificial] Man-made complex systems tend to develop cascades and runaway chains of reactions that decrease, even eliminate, predictability … the modern world may be increasing in technological knowledge, but, paradoxically, it is making things a lot more unpredictable.” Taleb is skeptical of what he calls “superfragile” predictions guided by economic theory and models which are inherently “unreliable for decision-making.” To him, “economics is like a fable—a fable writer is there to stimulate ideas, indirectly inspire practice perhaps, but certainly not to direct or determine practice.”

According to Taleb, policymaking that uses economic models to manage complex systems in a top-down fashion is bound to fragilize things—no matter how well-intentioned the intervention might be. His most poignant examples of the dangers of expert-guided prediction-making come from looking at economic policy which, in an attempt to minimize short-term gyrations in the economy and financial markets, instead sets them up for larger blow-ups with systemic consequences. He concludes that “even when an economic theory makes sense, its application cannot be imposed from a model, in a top-down manner.”

In Thinking, Fast and Slow, behavioral economist and decision-making researcher Daniel Kahnemann endorses a similar skepticism about relying on expert judgments to evaluate and make predictions about complex environments. Kahnemann summarizes research in various domains (medical, economic, etc.) finding that, due to limits and biases innate to human cognition, expert judgments amidst uncertainty and unpredictability—what he calls “low-validity” environments—are a dependably ineffective way to predict the future.

Antitrust operates in precisely the sort of environment that the works of Taleb and Kahnemann would suggest is poorly suited for subjective, predictive decision-making. The lawfulness of a merger is determined by predicting whether it will cause prices to go up, a monopolist’s abusive conduct by conjecturing whether prices were inflated over a surmised competitive level—everything heavily reliant on economic theories and models. And the fact-specific inquiry of every antitrust case—especially when any case involving dynamic tech markets—means that its practitioners never get exposed to the sort of “regularity” and “prolonged practice” that Kahnemann concludes is necessary for subjective expert judgments to acquire predictive validity. If anything, low validity is supercharged in digital markets operating in vast ecosystems of constantly-evolving and interrelated markets with complicated relationships among its players.

The works of Taleb and Kahnemann suggest that antitrust technocrats are on a fool’s errand that will result in inaccurate evaluations of market conditions and poor predictions about competitive effects. Bad competition policy will result, if for no other reason than the limits of human cognition and the complexities of the market environments being observed.

Pulling back the curtain on Economism in practice

Practitioners can also draw on their own experiences to find ample support for the skepticism that flows from the works of Taleb and Kahnemann about expert-based, predictive decision-making.

The pitfalls of Economism in antitrust can be seen in everyday practice. In merger cases, economic models are presented to predict future price increases by the merged companies. And parties looking to dodge enforcement actions in close-call cases hire economists to predict how a merger will lower costs, increase output, and improve innovation.

In private antitrust litigation, plaintiffs and defendants alike rely on armies of economists to make out the elements of a case or defend against it. Too often, the result is a series of warring expert reports submitted by uber-qualified economists with stellar reputations who—based on the exact same factual record—reach diametrically opposing positions about a market’s dynamics or likely competitive effects. Equally troubling is how the uncertainty of the expert opinions can be seen fading away by the time the court chooses a winner, as the prevailing view achieves a supreme prescience when cited by the judge in support of its decision.

Alarm bells should be going off. An academic field’s reputation would seem to be put in doubt, and with it the foundation of an influential body of law that shapes our economy and society. Instead, academics and policymakers are more likely to be heard describing the rigor and rationality that they believe neoliberal economic thinking has brought to antitrust enforcement. And while some reforms proposed by the mainstream antitrust community might seem dramatic within the existing paradigm, they are trivial when considering how none tackle the fundamental flaws of the status quo.

And so, paradoxically, as antitrust turns its focus on increasingly difficult-to-predict markets, it does so increasingly with Economism-driven prediction as its lodestar—like a captain that insists on navigating a ship with the stars even when it is obvious that clouds cover the night sky.

# 1NR

## K

### 1NR---AT Perm

#### Damage control DA. The perm is a liberal corrective that interposes Black radical theorizing between genocidal logics.

King 17, Assistant Professor of Women's, Gender and Sexuality Studies at Georgia State University. (Tiffany, Spring 2017, “Humans Involved: Lurking in the Lines of Posthumanist Flight”, *Critical Ethnic Studies*, Vol. 3, No. 1, pg. 173-174)

As an example of how the protocols, codes of conduct, and politesse of postcolonial “business as usual” unfold in the university, I reflect on my encounters as a student and now professor in the graduate classroom, reading scholarly texts, listening, and taking part in scholarly critique and the collegial repartee that occurs at academic conferences. Within these scenarios, I have observed the decorum of supposedly “engaged and rigorous” critique proceed in the following ways. Often postcolonial interventions into colonial or critical theory travel through phases, stages of progression, and levels of engagement with continental philosophy. First, in order to demonstrate your scholarly due diligence, capacity for rigor, and abstraction, you must learn and rehearse the origins of and become fluent in the language, idioms, and grammar of Deleuze and Guattari or whichever white scholar is in fashion. Second, you must figuratively inhabit and empathize with the white scholar’s very personal and particular existential and ethical questions (even if you cannot relate to her particular kind of situatedness or experience). It is often in graduate seminars where you have been asked—and we have been trained as faculty—to have you think about what it must have been like to be Karl Marx, Michel Foucault, or Gilles Deleuze and Félix Guattari in the moment in which they lived. Imagine the trials and tribulations of being a European bourgeois male maverick in the academy and civil society. In other words, you must internalize and perform this worldview as if it applies to you. After you internalize and perform, the third thing that you are allowed but by no means required to do is list the problems with this theory or worldview. Once you have identified the problems, even irreconcilable ones, you are encouraged to make an intervention or slight adjustment to the discourse or theory by asserting that you will now put Indigenous or Black life at the center of this body of thought. The challenge or intervention usually reads as “what if we put Native or Black studies at the center of Deleuzoguattarian thought?”

Although we may become disillusioned with and challenge a metanarrative, we are rarely encouraged to do what Eve Tuck does when she “Break[s] Up with Deleuze.” We are often prevented from getting to this stage of exasperation or justified disgust because we are not allowed to stop, look at, and more importantly feel the violence of Western turns in critical theory. Because of academic respectability politics that impose a kind of bourgeois politesse on all “communicative acts,” be they in person or in writing, it is impolite and more importantly irrational to be rendered devastated, enraged, mute, or immobile by the violent terms on which continental theory proceeds. One must tolerate that Deleuzoguattarian rhizomatic movements require Indigenous genocide. In fact, it is a necessary evil in order for the West to model the kind of unfettered nomadic movement that Deleuze and Guattari privilege. The neoliberal temporality of productivity also requires that scholars keep moving unaffected in the midst of the violence. In fact, one is required to work through and repair or do damage control for Deleuze and Guattari. This is what a “good scholar” does: puts Black or Native studies at the center of rhizomes rather than contesting the very terms in which lines of flight become epistemic entities. But how do we perform or act otherwise in the face of this kind of violence?

I am not arguing that academics should not read Deleuze and Guattari. As scholars committed to decolonial thought, we should read their work and understand how genocide and colonialism flow through it. However, we can read without becoming seduced and attached to the work. I turn again to the writings of Black and Native feminists as an example of what this critical disinterest and refusal might look like.32 As Simpson and Tuck and Yang argue, refusal can reroute one set of concerns and questions and redirect them toward other pursuits. Better yet, disenchantment and pessimism can compel one to perceive or think about new questions. Refusal and misandry can move you out of the circuit that the corporate university imposes on critical thinking: know, internalize, perform, disagree, and then center yourself.

### 1NR---Courts Link

#### Court based solutions privilege the status of lawyers and marginalize the clients and their communities—It silences the black client and makes them assume a subservient role

Alfieri 7, Professor of Law and Director, Center for Ethics and Public Service, University of Miami School of Law. (Anthony, Faith in Community: Representing "Colored Town": "'What about This Isn't a Community?', California Law Review October, 2007 95 Calif. L. Rev. 1829)

Lopez focuses on the progressive lawyer as a regnant archetype. n120 He describes the typical regnant lawyer as a privileged outsider too blinkered by professional norms to engage in the transformative, community-based work of rebellious lawyering. He traces the tradition of regnant lawyering to the first wave of progressive lawyers who rushed to the aid of poor communities in the 1960s. Laden with the subordinating practice traditions of law and culture, and the concordant discourses and images of the helpless poor, this initial wave of lawyers instinctively reproduced in advocacy the traditional roles and relationships of their hierarchical legal education and training. n121 Both clinical and non-clinical strands of legal education proclaim the dominant role of lawyers, legislators, and legal decisionmakers (judges, administrators, and law enforcement officers) in law generally and in poverty law specifically. The reproduction of the traditional roles and relationships of poverty law, Lopez explains, caused progressive lawyers to reenact the cultural and socio-economic marginalization of poor clients and communities in their advocacy. Reenactment occurred naturally and necessarily in the daily work of counseling, negotiation, and trial advocacy. The natural logic of this everyday routine caused lawyers to dominate the advocacy process. The instrumental necessity of accommodating the adversarial system bolstered that logic. Staggered by the intractable nature of poverty and thwarted by the unresponsiveness of courts, legislatures, and administrative agencies, Lopez's regnant lawyers quickly retreated from poor communities. Lopez ascribes the stymied and frequently self-sabotaging efforts of progressive lawyers to their failure to grasp the connection between professional norms and political goals. To Lopez, regnant professional norms determined the cramped scope of lawyer knowledge, the crippling stance of lawyer role, and the disempowering quality [\*1853] of the lawyer-client relationship. The norms proved ignorant of the cultural, political, and socio-economic structures of subordination and the experiences of subordinated people. Over time, indifference to poor people and to places of impoverishment condemned the formal, problem-solving mission of progressive lawyers. In Lopez's view, ignorance of subordination and subordinated people caused regnant lawyers to infer that the perceived helplessness of the poor, manifested in the frequently observed individual dependence and collective passivity of clients, lay culturally embedded in the character of poor communities themselves. Applied to indigent communities of color, this inference attributed client helplessness to a deep-seated culture of poverty. The attribution of dependency to social pathology, rather than moral deviance, consigned clients to obeisance, thus authorizing lawyers to dominate legal-political campaigns mounted on behalf of poor communities. The predominance of lawyer leadership fastened the legal-political campaigns of the poor and disenfranchised to litigation strategies of direct service and law reform marked by client absence and silence. Although well-intentioned, progressive lawyers regularly silenced individual clients, groups, and institutions to propel litigation campaigns. For Lopez, the absence of meaningful client participation in those campaigns discouraged alternative community-building strategies and diminished the value of community education and organization. Lopez endorses community education as a collaborative form of critical pedagogy. n122 He views community organizing as a key method of grassroots coalition-building, urging the merits of collective mobilization and problem-solving. For decades, the prevalence of lawyer-led litigation campaigns repeatedly subordinated and erased individual clients and their corresponding communities in advocacy. Under the regnant idea of lawyering, client diminution and exclusion coincides with the natural order of poverty and the necessary imperatives of litigation. The combination of natural and necessitarian logic, in fact, creates a general expectation of exclusion shared by progressive lawyers and their anti-poverty allies in government and in the private sector. To Lopez, the widespread espousal of the regnant idea of lawyering celebrates professional identity, knowledge, and power. That celebration discounts indigenous, community-based sources of identity, practical knowledge, and political power. Conferring wisdom and status on progressive lawyers privileges their sole authority to describe the socio-legal world of poor communities. With that authority comes the prerogative of regnant lawyering to pronounce the intrinsic truth of the poor and poverty, a truth daily contested in [\*1854] the political activism of community groups in Village West, Overtown, and Liberty City.

#### The use of court action legitimates and entrenches racial subordination

Chin 12

Jeremiah Chin is a J.D. candidate at the Sandra Day O'Connor College of Law and a Ph.D. candidate in the department of Justice and Social Inquiry, both at Arizona State University, California Western Law Review Spring, 2012 California Western Law Review 48 Cal. W. L. Rev. 369

Post-racialism and colorblindness are not new to the law, but evolved from a history of legislation designed to protect oppressed communities. As Professor Ian Haney Lopez notes, "those who purposefully seek to use the law to end discrimination or gain advantages for minority communities, may also substantially though unwittingly contribute to the legal legitimization of racial domination and subordination." n9 Statutes, legislators, judges, and common law help to create racial difference through the law by creating an idea-system that (1) legitimates race; (2) "helps racial categories to [\*372] transcend the sociohistorical contexts in which they develop," n10 making racial classification seem natural and inherent, rather than socially constructed; and (3) reifies racial categories to "transform them into concrete things, making the categories seem natural, rather than human creations." n11 To understand the connections between law and social norms, this Comment uses a Critical Race Theory framework to address questions of how the modern rhetoric of case law, initiatives, and statutes have obscured the ongoing role of racism and discrimination in the United States, while exploiting past civil rights rhetoric to re-center white supremacy in the law. Central to Critical Race Theory is the notion that racism is endemic in the United States. "Racism is normal, not aberrant ... . It looks ordinary and natural to persons in the culture" and therefore formal legal remedies can only address extreme instances of injustice, ignoring "the business-as-usual forms of racism that people of color confront every day and that account for much misery, alienation, and despair." n12 Racism is a social construct that takes multiple forms. One is the more visible, often structural, manifestation of racism in overt acts of oppression, such as segregation or slavery. But behind the scenes lurks the larger collection of cultural attitudes towards race that form the dominant narrative of white supremacy n13 and "racial subordination [which] maintains and perpetuates the American social order." n14 [\*373] Existing social structures and institutions allow for change only through what Derrick Bell has termed "interest convergence." n15 Social movements alone do not lead to racial justice, but rather "white elites will tolerate or encourage racial advances for blacks only when such advances also promote white self-interest." n16 Bell explains that even after policies have been put in place to create a semblance of racial justice, "that remedy will be abrogated at the point that policymakers fear the remedial policy is threatening the superior social status of whites, particularly those in the middle and upper classes." n17 To understand and undermine interest convergence in law, Critical Race Theory emphasizes a "call to context" that requires a deeper examination of legal and social issues by paying "attention to the details of minorities' lives as a foundation for our national civil rights strategy." n18 Returning context to the legal conversation reveals the role of law as both ideology and coercion, as "ideology convinces one group that the coercive domination of another is legitimate." n19