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

#### Resolved means a policy

Louisiana House 5

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

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

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

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

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

#### Should requires action

AHD 2k

(American Heritage Dictionary 2000 (Dictionary.com))

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

#### ‘Its’ means cooperation must be governmental

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

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

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

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

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

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

#### Two impacts:

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

#### Clash, debate is unique because of the iteration of limited arguments over the course of a season that forces debaters to improve their arguments and reconsider their positions. Their topic is unilaterally declared and imprecise, which prevents iteration through shallow debates, unpredictable advocacies, and lack of testing. Turns case.

#### Clash outweighs – a predictable point of disagreement allows for in depth preparation that results in iterative improvement of our arguments and superior education – abdication of a predictable stasis point flips incentives and prevents contradiction. Turns the case – rigorous testing is key to avoid false positives, polarization, and prove anything they said is true.

Poscher, 16—director at the Institute for Staatswissenschaft and Philosophy of Law at the University of Freiburg (Ralf, “Why We Argue About the Law: An Agonistic Account of Legal Disagreement”, *Metaphilosophy of Law*, Tomasz Gizbert-Studnicki/Adam Dyrda/Pawel Banas (eds.), Hart Publishing, forthcoming, dml)

Hegel’s dialectical thinking powerfully exploits the idea of negation. It is a central feature of spirit and consciousness that they have the power to negate. The spirit “is this power only by looking the negative in the face and tarrying with it. This […] is the magical power that converts it into being.”102 The tarrying with the negative is part of what Hegel calls the “labour of the negative”103. In a loose reference to this Hegelian notion Gerald Postema points to yet another feature of disagreements as a necessary ingredient of the process of practical reasoning. Only if our reasoning is exposed to contrary arguments can we test its merits. We must go through the “labor of the negative” to have trust in our deliberative processes.104 This also holds where we seem to be in agreement. Agreement without exposure to disagreement can be deceptive in various ways. The first phenomenon Postema draws attention to is the group polarization effect. When a group of like‐minded people deliberates an issue, informational and reputational cascades produce more extreme views in the process of their deliberations.105 The polarization and biases that are well documented for such groups106 can be countered at least in some settings by the inclusion of dissenting voices. In these scenarios, disagreement can be a cure for dysfunctional deliberative polarization and biases.107 A second deliberative dysfunction mitigated by disagreement is superficial agreement, which can even be manipulatively used in the sense of a “presumptuous ‘We’”108. Disagreement can help to police such distortions of deliberative processes by challenging superficial agreements. Disagreements may thus signal that a deliberative process is not contaminated with dysfunctional agreements stemming from polarization or superficiality. Protecting our discourse against such contaminations is valuable even if we do not come to terms. Each of the opposing positions will profit from the catharsis it received “by looking the negative in the face and tarrying with it”. These advantages of disagreement in collective deliberations are mirrored on the individual level. Even if the probability of reaching a consensus with our opponents is very low from the beginning, as might be the case in deeply entrenched conflicts, entering into an exchange of arguments can still serve to test and improve our position. We have to do the “labor of the negative” for ourselves. Even if we cannot come up with a line of argument that coheres well with everybody else’s beliefs, attitudes and dispositions, we can still come up with a line of argument that achieves this goal for our own personal beliefs, attitudes and dispositions. To provide ourselves with the most coherent system of our own beliefs, attitudes and dispositions is – at least in important issues – an aspect of personal integrity – to borrow one of Dworkin’s favorite expressions for a less aspirational idea. In hard cases we must – in some way – lay out the argument for ourselves to figure out what we believe to be the right answer. We might not know what we believe ourselves in questions of abortion, the death penalty, torture, and stem cell research, until we have developed a line of argument against the background of our subjective beliefs, attitudes and dispositions. In these cases it might be rational to discuss the issue with someone unlikely to share some of our more fundamental convictions or who opposes the view towards which we lean. This might even be the most helpful way of corroborating a view, because we know that our adversary is much more motivated to find a potential flaw in our argument than someone with whom we know we are in agreement. It might be more helpful to discuss a liberal position with Scalia than with Breyer if we want to make sure that we have not overlooked some counter‐argument to our case. It would be too narrow an understanding of our practice of legal disagreement and argumentation if we restricted its purpose to persuading an adversary in the case at hand and inferred from this narrow understanding the irrationality of argumentation in hard cases, in which we know beforehand that we will not be able to persuade. Rational argumentation is a much more complex practice in a more complex social framework. Argumentation with an adversary can have purposes beyond persuading him: to test one’s own convictions, to engage our opponent in inferential commitments and to persuade third parties are only some of these; to rally our troops or express our convictions might be others. To make our peace with Kant we could say that “there must be a hope of coming to terms” with someone though not necessarily with our opponent, but maybe only a third party or even just ourselves and not necessarily only on the issue at hand, but maybe through inferential commitments in a different arena. f) The Advantage Over Non‐Argumentative Alternatives It goes without saying that in real world legal disagreements, all of the reasons listed above usually play in concert and will typically hold true to different degrees relative to different participants in the debate: There will be some participants for whom our hope of coming to terms might still be justified and others for whom only some of the other reasons hold and some for whom it is a mixture of all of the reasons in shifting degrees as our disagreements evolve. It is also apparent that, with the exception of the first reason, the rationality of our disagreements is of a secondary nature. The rational does not lie in the discovery of a single right answer to the topic of debate, since in hard cases there are no single right answers. Instead, our disagreements are instrumental to rationales which lie beyond the topic at hand, like the exploration of our communalities or of our inferential commitments. Since these reasons are of this secondary nature, they must stand up to alternative ways of settling irreconcilable disagreements that have other secondary reasons in their favor – like swiftness of decision making or using fewer resources. Why does our legal practice require lengthy arguments and discursive efforts even in appellate or supreme court cases of irreconcilable legal disagreements? The closure has to come by some non‐argumentative mean and courts have always relied on them. For the medieval courts of the Germanic tradition it is bequeathed that judges had to fight it out literally if they disagreed on a question of law – though the king allowed them to pick surrogate fighters.109 It is understandable that the process of civilization has led us to non‐violent non‐ argumentative means to determine the law. But what was wrong with District Judge Currin of Umatilla County in Oregon, who – in his late days – decided inconclusive traffic violations by publicly flipping a coin?110 If we are counting heads at the end of our lengthy argumentative proceedings anyway, why not decide hard cases by gut voting at the outset and spare everybody the cost of developing elaborate arguments on questions, where there is not fact of the matter to be discovered? One reason lies in the mixed nature of our reasons in actual legal disagreements. The different second order reasons can be held apart analytically, but not in real life cases. The hope of coming to terms will often play a role at least for some time relative to some participants in the debate. A second reason is that the objectives listed above could not be achieved by a non‐argumentative procedure. Flipping a coin, throwing dice or taking a gut vote would not help us to explore our communalities or our inferential commitments nor help to scrutinize the positions in play. A third reason is the overall rational aspiration of the law that Dworkin relates to in his integrity account111. In a justificatory sense112 the law aspires to give a coherent account of itself – even if it is not the only right one – required by equal respect under conditions of normative disagreement.113 Combining legal argumentation with the non‐argumentative decision‐ making procedure of counting reasoned opinions serves the coherence aspiration of the law in at least two ways: First, the labor of the negative reduces the chances that constructions of the law that have major flaws or inconsistencies built into the arguments supporting them will prevail. Second, since every position must be a reasoned one within the given framework of the law, it must be one that somehow fits into the overall structure of the law along coherent lines. It thus protects against incoherent “checkerboard” treatments114 of hard cases. It is the combination of reasoned disagreement and the non‐rational decision‐making mechanism of counting reasoned opinions that provides for both in hard cases: a decision and one – of multiple possible – coherent constructions of the law. Pure non‐rational procedures – like flipping a coin – would only provide for the decision part. Pure argumentative procedures – which are not geared towards a decision procedure – would undercut the incentive structure of our agonistic disagreements.115 In the face of unresolvable disagreements endless debates would seem an idle enterprise. That the debates are about winning or losing helps to keep the participants engaged. That the decision depends on counting reasoned opinions guarantees that the engagement focuses on rational argumentation. No plain non‐argumentative procedure would achieve this result. If the judges were to flip a coin at the end of the trial in hard cases, there would be little incentive to engage in an exchange of arguments. It is specifically the count of reasoned opinions which provides for rational scrutiny in our legal disagreements and thus contributes to the rationales discussed above. 2. THE SEMANTICS OF AGONISTIC DISAGREEMENTS The agonistic account does not presuppose a fact of the matter, it is not accompanied by an ontological commitment, and the question of how the fact of the matter could be known to us is not even raised. Thus the agonistic account of legal disagreement is not confronted with the metaphysical or epistemological questions that plague one‐right‐answer theories in particular. However, it must still come up with a semantics that explains in what sense we disagree about the same issue and are not just talking at cross purposes. In a series of articles David Plunkett and Tim Sundell have reconstructed legal disagreements in semantic terms as metalinguistic negotiations on the usage of a term that at the center of a hard case like “cruel and unusual punishment” in a death‐penalty case.116 Even though the different sides in the debate define the term differently, they are not talking past each other, since they are engaged in a metalinguistic negotiation on the use of the same term. The metalinguistic negotiation on the use of the term serves as a semantic anchor for a disagreement on the substantive issues connected with the term because of its functional role in the law. The “cruel and unusual punishment”‐clause thus serves to argue about the permissibility of the death penalty. This account, however only provides a very superficial semantic commonality. But the commonality between the participants of a legal disagreement go deeper than a discussion whether the term “bank” should in future only to be used for financial institutions, which fulfills every criteria for semantic negotiations that Plunkett and Sundell propose. Unlike in mere semantic negotiations, like the on the disambiguation of the term “bank”, there is also some kind of identity of the substantive issues at stake in legal disagreements. A promising route to capture this aspect of legal disagreements might be offered by recent semantic approaches that try to accommodate the externalist challenges of realist semantics,117 which inspire one‐right‐answer theorists like Moore or David Brink. Neo‐ descriptivist and two‐valued semantics provide for the theoretical or interpretive element of realist semantics without having to commit to the ontological positions of traditional externalism. In a sense they offer externalist semantics with no ontological strings attached. The less controversial aspect of the externalist picture of meaning developed in neo‐ descriptivist and two‐valued semantics can be found in the deferential structure that our meaning‐providing intentions often encompass.118 In the case of natural kinds, speakers defer to the expertise of chemists when they employ natural kind terms like gold or water. If a speaker orders someone to buy $ 10,000 worth of gold as a safe investment, he might not know the exact atomic structure of the chemical element 79. In cases of doubt, though, he would insist that he meant to buy only stuff that chemical experts – or the markets for that matter – qualify as gold. The deferential element in the speaker’s intentions provides for the specific externalist element of the semantics. In the case of the law, the meaning‐providing intentions connected to the provisions of the law can be understood to defer in a similar manner to the best overall theory or interpretation of the legal materials. Against the background of such a semantic framework the conceptual unity of a linguistic practice is not ratified by the existence of a single best answer, but by the unity of the interpretive effort that extends to legal materials and legal practices that have sufficient overlap119 – be it only in a historical perspective120. The fulcrum of disagreement that Dworkin sees in the existence of a single right answer121 does not lie in its existence, but in the communality of the effort – if only on the basis of an overlapping common ground of legal materials, accepted practices, experiences and dispositions. As two athletes are engaged in the same contest when they follow the same rules, share the same concept of winning and losing and act in the same context, but follow very different styles of e.g. wrestling, boxing, swimming etc. They are in the same contest, even if there is no single best style in which to wrestle, box or swim. Each, however, is engaged in developing the best style to win against their opponent, just as two lawyers try to develop the best argument to convince a bench of judges.122 Within such a semantic framework even people with radically opposing views about the application of an expression can still share a concept, in that they are engaged in the same process of theorizing over roughly the same legal materials and practices. Semantic frameworks along these lines allow for adamant disagreements without abandoning the idea that people are talking about the same concept. An agonistic account of legal disagreement can build on such a semantic framework, which can explain in what sense lawyers, judges and scholars engaged in agonistic disagreements are not talking past each other. They are engaged in developing the best interpretation of roughly the same legal materials, albeit against the background of diverging beliefs, attitudes and dispositions that lead them to divergent conclusions in hard cases. Despite the divergent conclusions, semantic unity is provided by the largely overlapping legal materials that form the basis for their disagreement. Such a semantic collapses only when we lack a sufficient overlap in the materials. To use an example of Michael Moore’s: If we wanted to debate whether a certain work of art was “just”, we share neither paradigms nor a tradition of applying the concept of justice to art such as to engage in an intelligible controversy.s

#### TVA #1: The United States federal government should expand antitrust tort liability enforcement to allow coalitions of black women to file class action law suits against corporate America for the historical anticompetitive exploitation of black women.

#### Class action suits are a method of bottom up social change

Shang 18, a member of the Forbes 30 Under 30 class of 2018 and a cofounder of Legalist. (Eva, 6 Lawsuits That Can Drive Social Change And Protect Personal Rights, https://www.forbes.com/sites/under30network/2018/01/11/6-lawsuits-that-can-drive-social-change-and-protect-personal-rights/?sh=4a59f38f21b3

But what if our most important social movements needed litigation to bring real financial consequences? Lawsuits, including class actions and individual cases, have a history of catalyzing change. From Brown vs. Board of Education in 1954 and the lawsuits linking Big Tobacco to cancer in the 1980’s and 1990’s to the much more recent lawsuits that exposed Silicon Valley sexism and sexual harassment, a public lawsuit allows people to speak truth to power.

#### The ability to pursue class action suits mobilizes coalitions of activists far beyond the suits themselves—independent of winning or losing cases the process is empowering

Lovell et al 16, Professor of Political Science at the University of Washington, (George, with Michael McCann Professor of Political Science at the University of Washingto, and Kirstine Taylor Post Doctoral Lecturer in Political Theory in the Department of Political Science, University of Washington, Covering Legal Mobilization: A Bottom-Up Analysis of "Wards Cove v. Atonio" Source: Law & Social Inquiry, Vol. 41, No. 1 (Winter 2016), pp. 61-99, JStor, KU Library)

Class Action and Collective Action

One of the most promising features of the disparate impact logic embraced by cannery activists was the amenability to collective mobilization through class action lawsuits. The focus on structural inequalities embedded in longstanding practices meant that violations were systematic and thus affected groups of workers and not just individual victims of discrete discriminatory decisions. The opportunity for class actions was important in several ways. First, class action suits helped to overcome collective action and cost problems by improving the incentives for workers and their attorneys to file disparate impact lawsuits (Cramton 1995; Hensler and Moller 2000). Moreover, as scholars (McCann 1994) have shown in other contexts, the activists recognized that class action lawsuits can be useful beyond the courtroom as mechanisms for organizing workers, increasing union participation, and forging coalitions with other groups. As Scott put it: "[T]he idea of the EEOC contract ... was to educate workers about Title VII. But what we actually did in the process, was we organized" (interview with Tyree Scott, March 17, 1998). The organizing began with workers, but, as with the legacy of gender-based pay equity, it often extended well beyond to broad coalitions. As former ACWA activist Michael Woo told us: There was a community organizing aspect to bring in support around these lawsuits. Well, the idea was to develop a class action lawsuit ... to not only have a legal component, which was the centerpiece of it, but have a community organizing piece to span the generations and to get the kind of community support we needed to move the lawsuits forward. ... It was important to surface some of the earlier generations of cannery workers, to do that kind of organizing and get people feeling like this was a movement that affected all of us, affected all of our families. And it really helped in terms of surfacing not only the plaintiffs who were part of the class action lawsuit. It also was important in bringing the kind of political support in the community we needed to bear. (Interview with Michael Woo, March 13, 1998) In sum, disparate impact claims facilitated solidaristic group action advancing a collective nomos that overcame, rather than perpetuated, the individualizing logic of disparate treatment litigation and much US civil law (Scheingold 1974). Far from viewing the litigation and anticipated legal remedies as ends in them selves, the activists from the beginning integrated Title VII lawsuits into a much broader political and organizing strategy for advancing a variety of goals grounded in their ambitious nomos and reaching well beyond the lawsuit (and beyond the borders of the United States). Those broader efforts were sometimes linked to their involvement in litigation, but they also persisted long after the Supreme Court's ruling led them to abandon the strategy of using Title VII litigation. First, the young cannery activists sought to challenge and replace the corrupt and unrespon sive leadership of the cannery workers' union, ILWU Local 37 (Domingo 2010, 81— 100). "I think it's 1976 where we're becoming much more clear we ... need to take the situation from having this lawsuits that we file outside the union, to actua going back into the union. Part of our strategy of influence was to re-seize the union, and to change the way that it operates," David Delia told us (interview with David Delia, March 8, 1998). The lawsuits provided direct support when key ACWA activists returned to Alaska as workers after a court found that the blacklist was unlawful retaliation against civil rights plaintiffs. "Most of us were blacklisted for a really long time. So we never got back up there until pretty close to when the cases were won" (interview with Cindy Domingo, March 8, 1998).

#### TVA #2: The United States federal government should declare business firms per se anticompetitive.

#### The TVA re-interprets antitrust law’s central purpose. It enables a social democratic vision of economic control, whereby coordination rights are granted instead to the state, co-ops, collectives, and/or unions.

Marshall Steinbaum et al 20, Assistant Professor of Economics at the University of Utah, Left Anchor, podcast episode 155: “Socialism vs. Antitrust with Marshall Steinbaum,” 9/12/20, transcribed by Otter, https://leftanchor.podbean.com/e/episode-155-socialism-vs-antitrust-with-marshall-steinbaum/

Marshall Steinbaum 31:39

But yeah, I mean, there's a kind of what you were saying, I definitely agree with that, I guess I would push back a little bit on the kind of interpretation of the states moving away. And so like, the only thing that matters is what whether Tim Cook allows Uber to make a living, as opposed to whether, you know, the taxing authorities of every city and their state labor departments and the FTC FTC have a say on it. Like they're, they're, you know, small potatoes in comparison to the CEO of some company. I think I mean, that's true about, you know, who wields power in the economy. But it's not right to say that that's because the state has retreated and sort of ceded all control to, to the capitalist, I think we have to understand the state's involvement or policies involvement as being, you know, kind of inescapable. So the question is like, okay, so you've got, you know, like, incorporation statutes, like who's allowed to be a company to enjoy limited liability or whatever, like, people don't think of that as being part of economic policy. But it absolutely is not just, you know, is Apple allowed to be a corporation or not a corporation as, as you know, say it's a California Corporation? I mean, it's probably a Delaware Corporation, but whatever, you know, can it operate across state lines? You know, these were big issues in the 19th century. Nowadays, we get things like, oh, if you're a corporation, then basically anything you want to do is legal under the antitrust laws, you know, but people who are not corporations cannot act together under the antitrust laws. So for example, you know, you're talking about like, oh, Uber could be liable under antitrust for this gigantic price fixing conspiracy. Through, executed through verticals restraints, yes. You know, who has actually been found to be liable under the antitrust laws? Uber drivers for potentially collectively bargaining their wages against Uber. So that it's this idea that like, Oh, you know, these individual drivers, like they're independent businesses operating on this neutral platform, but they can't get together. That's what the antitrust laws forbid. Whereas this one gigantic corporation that dominates them that is absolutely allowed to do whatever it wants. So this is the kind of concept that my my colleague and collaborator Sanjukta Paul is called the allocator, antitrust is an allocator of coordination rights and the title of her paper. This idea is like, who's allowed to coordinate economic activity? Is it it, and what she says is that antitrust has what's called the firm exemption. So here she's drawing on what what, you know, most every antitrust person recognizes and is known in the jurisprudence is the labor exemption, which is that labor unions bargaining wages within a recognized bargaining framework cannot violate the antitrust law through that collective bargaining. So that the idea is that's an exemption to antitrust's usual, preference for competition. What she says is, you know, we have to reinterpret that as being, as there being a firm exemption to antitrust, which is Uber telling everybody what to do, that has an exemption from antitrust law by virtue of the fact that Uber is a corporation and or the way that we have chosen to allocate coordination rights in her framework is to allow Uber to coordinate entire markets in the case of Apple to allow Apple to determine what is presented on its on its app store and you know, it has, you know, pretty, you know, strong representation in the retail smartphone market. So it's like okay, you know, Uber is probably going for relative upscale clientele, they all have iPhones, if it can't get on the iPad, if it can't get on the App Store can't get on the iPhone. And if you can't get on the iPhone, they have no business. You know, that is the allocation of coordination rights over that market to Apple, as opposed to some other mechanism for allocating coordination rights. And this is where, you know, to get back to what we were talking about earlier, anti monopolist framework would say, you know, there's no reason why Apple gets to be the one who decides who sees what, why don't we potentially, you know, in a kind of Co Op context, give, give that right to, you know, a consortium or, you know, quote unquote, union of app developers, or in the case of, say, ride sharing, like, why don't we have a union of taxi drivers, and they determine, you know, who gets who gets matched with which customer and what the fare is, as opposed to the company determining that

Alexi 35:48

this is so important, and I think it's really worth emphasizing, you know, the point about how jurisprudence and an antitrust enforcement does what she said, and so far as it, it chooses sides, and who can coordinate these things and who's autonomous and who has power

. And since we're speaking of Apple, maybe you can talk a bit about how sanitation workers right at Kodak, Kodak back in the 80s had more power to coordinate and kind of exert their their power over sanitation workers at Apple, right in contemporary times, and then you write about how that is kind of an example of, you know, how the separation of workers from lead firms is kind of a simultaneous erosion of the in the jurisprudence of the Sherman act prohibitions on vertical restraints. So, yeah, maybe talk even a bit more about about the importance of this.

Marshall Steinbaum 36:40

Yeah, so that's getting to what a great economist David Weil has called the fissured workplace. And I think you're referring specifically to a article that was published, I think, by Neil Irwin, if I recall, correctly, in the New York Times, a couple years ago, that was profiling two specific people, one of whom had been kind of janitorial worker on payroll at Kodak in the early 80s. And like, she had basically benefited from their, you know, corporate policies that included incentives to like go to community college and get credentials. And so she got qualified as I you know, sort of IT person, she was like, trained on Lotus 123, or something from the, you know, from the dark history of personal computing. You know, she kind of worked her way up through the ranks at Kodak, thanks to the fact that she started in the ranks of Kodak that is that she was a janitorial worker on the payroll, she was able to be promoted, basically, to the point of being the head of it for the entire company at some at one point. So she was a senior executive, you know, and that kind of social mobility via the mechanism of a major economy leading firm that employs people kind of every stratum of the occupational hierarchy of the income hierarchy, and is itself a like, somewhat egalitarian organization in its own right. I mean, insofar as any corporation could be egalitarian within capitalism, you know, I think this is kind of what Wynand was talking about, when he referred to, you know, this sort of New Deal state that was created by the National Labor Relations Act and other other, you know, kind of New Deal reforms, it's like that, that kind of somewhat egalitarian corporate organization is, you know, a thing of the past. And my argument would be well, it's and it's the erosion of antitrust that made that not the case. So in the instance of Apple, the contrary, the contrasting individual was, you know, janitorial services worker who was contracted, so she was employed by some, you know, janitorial services contractor whom Apple contracted with to clean its offices, but like, there's no way that she's ever going to be promoted to be an employee of Apple, let alone a senior executive at Apple, you know, nowadays, Apple is one of the economies leading firms. So there's different, you know, just, you know, take and both firms are like, somewhat are considered somewhat technologically innovative in their time. So like, think of these, you know, kind of economy leading like blue chip companies that are that like defined the apex of the American economy in two different eras. One of them is constructed such that it's possible for a janitor to eventually become a senior executive, the other is constructed so as to make that impossible at all costs. And and and, you know, I think Irwin's piece gets exactly at this question of employment classification as being a crucial constituent of that changing reality. I would say that the ability to contract everything out and yet control everything so minutely use a, you know, arms legally at arm's length, but like economically, you know, at a very close distance and with total control to the boss, you know, that is we have to understand the erosion of antitrust is being just as much a part of that as the non enforcement of labor laws, the erosion of of enforcement of those and so on.

Ryan Cooper 39:59

Yeah, Yeah, that's that's a great dichotomy. I wanted to also, I wanted to bring up the the welfare state. I n, in, in a couple of these articles, you've mentioned how, you know, the gig economy and various sort of like, anti trust, you know, trying to escape any kind of liability for, for being responsible for one's, you know, employees has materially harmed workers by sort of excluding them from, you know, like traditional welfare state stuff, which is often administered through, you know, through the employment relation. But you've you've also written about how, like the cares act, part, partly helped with that, and then partly maybe, sort of entrenched the bad relationship. But, you know, in general, the cares act was like a pretty astounding piece. I mean, it's seems mostly expired now. But, like, it was a really interesting piece of legislative legislation that, that helped people out a lot and kind of revealed a lot of underlying, you know, deficiencies in the way that people in DC have done policy for the last like, 40 years. So can you can you kind of go through, like, the how the welfare state interacts with, you know, anti trust, and and, you know, kind of kind of how the two can can complement each other? And how they that might be fixed?

Marshall Steinbaum 41:41

Yeah, absolutely. So,we've been talking a lot about this question of the legal employment relationship, and why that matters so much for workers. And a big reason why it matters so much is exactly as you said, that so much of our welfare state is conditioned on employment. And so that's what you know. So in some sense, this like category, that's kind of, you know, not the main focus of attention at the time of the New Deal. You're that this distinction, the question of like employment independent contractor, and that is an important distinction, as I was referring to in the antitrust cases that we talked about earlier. But like, this idea that, you know, a lot matters for you economically, on the question of whether you are legally an employee or not, that's not true to the New Deal era, per se, it's that's what's been layered on since and especially since we kind of adopted the backlash to the Great Society view that the problem with the welfare state is that it causes people not to work and inculcates a culture of poverty. You know, all of that is basically racist drivel. But it's had an enormous impact on the kind of Orthodoxy around welfare policy, especially in DC. So as I've talked about, either of I've talked about in this podcast, certainly a couple of times on podcasts with bruenig. And in some other writings, you know, there's this sort of mania for the Earned Income Tax Credit among DC policy wonk types, which is this, basically wage subsidy for people who were employed in market labor, and it doesn't help you if you're not employed in market labor, and arguably, it hurts you, even if you are employed to market labor, and you don't receive it, because it by causing people to, you know, as sort of have to be employed to market labor in order to gain the benefit and arguably depresses wages for people who aren't beneficiaries, so reduces the market wage, basically. You know, that cares act is kind of by chance, the opposite of that. So first of all, you said that the cares act was like this revolutionary thing. It was that with respect to that unemployment insurance position, provision, so called pandemic unemployment compensation, and then pandemic unemployment assistance, we'll get to what those two things are in a second, the rest of the cares act for you know, it also included a, you know, sort of like one off $1200 check from the IRS, you know, for people earning about, I guess, it was like below 100,000 a year. And then there was like, a ton of stuff that was basically an indefinite extension of a whole, like firehose of money to, you know, the economy's leading corporations via the Federal Reserve and the Treasury. But I think, especially the Federal Reserve, so you're saying it's, like, mostly expired now? Well, not the part that gave capital, everything they want it that part's not expired, and that's exactly why the other part hasn't been renewed. So there was a sense, you know, the kind of political calculus that gave rise to the cares act is like, you know, we have like, suddenly a pandemic has hit the economy, it's going to be temporary, you know, so we need to, like, we need something to tie people over, let's juice up the unemployment insurance system, give people $1200 checks. And make sure all these businesses are able to borrow, you know, that are facing, you know, huge sudden shortfalls. It's like, oh, but you know, by the way, the last of those things that will be permanent, the first of those things will be temporary, because the pandemic is assumed to be temporary, and oh, wait, the pandemic is not temporary, or at least it's less temporary than we thought it was gonna be. You know, those people are suddenly high and dry because capitalists already got everything they wanted. So it's like we're in a pretty shitty situation, frankly, visa for pretty much all working people, but the stock market's doing great. Okay, so what did the cares act have for unemployment insurance? And why is that such a challenge to kind of policy received wisdom, it basically added this lump. So the PUC part, pandemic unemployment compensation added a lump sum $600 per week, on to traditionally eligible workers for unemployment. So that's PUC so if you're eligible for unemployment, there's some state formula that says that's a function of what your wages were pre layoff. You know, generally as as the lingo and unemployment insurance is replacement rates, so it's how much of your loss of your lost wages are, quote, replaced by unemployment insurance, you know, the average in the United States for people who are eligible is something like 50%. And like 50% of unemployed people aren't eligible or was not able to collect it, you know, very, like leaky sieve type system, that P You see, element of the cares act up to that number by whatever the replacement rate was under state law plus $600, which for a lot of workers is basically, you know, a gigantic windfall relative to the shittiness of the jobs that they actually have to do. So many workers, especially in low wage occupations experienced, you know, better pay when they were receiving the PVC than they did in their jobs and that they're ever likely to get in their jobs. PUA was the version of that for the gig economy. Basically, it was for workers who were not eligible for traditional unemployment insurance. And many gig economy workers were dis employed by the pandemic, this was a fully federal system that essentially gave them access to a temporary pool of unemployment insurance. And the key thing there is at the time, I wrote a letter with Sen. jepto, whom I mentioned earlier, I wrote a letter to Congress about that they have basically done a kind of ex post bailout of the of all of the misclassification that gig economy firms have been doing for a decade now. Because they're saying, Oh, you know, Uber has never paid a dime in unemployment insurance premiums for its workers, and they become unemployed all the time. Suddenly, in this pandemic, many of those workers are eligible for unemployment insurance, thanks to PUA. So that's great that they're, you know, able to subsist, but instead of paying into it, you know, Uber gets to skate for 10 years on its premiums, and then the federal government pays for that. So that was, you know, kind of, you know, a, under the radar screen bailout of the gig economy, employers. Anyway, now, you know, we're in this position where these things have been taken away, and what that has meant, you know, so the interesting thing that's come out in the economics research about the effect of the cares act, and specifically these UI provisions, is that, you know, that pandemic is and has been devastating to the low wage workforce, huge, extreme spike in unemployment, it's still very high, you know, a lot of service workers have been disappointed. But actually poverty rates went down, and earnings went up, or income went up, because their income was more than replaced by these temporary, generous provisions that were not conditional on showing up for work, because they couldn't be conditional on showing up for work, the whole point of the pandemic is that people can do their work, you know, now, you know, and, you know, given that like that, like, in the midst of an economic catastrophe, we reduce the poverty rate, you know, that like flies in the face of everything that we know about how the poverty, you know, the poverty rate usually goes up when there's an economic recession. And what we just found out is like, if you don't want that to happen, if you do want to reduce poverty, you have to enact these policies that aren't conditional on work. That's how you reduce policy, you give people money, basically, and in this case, unemployed people are the people who are likely to be dev low income to be in poverty. So that's how you get money to. So now, you know, we're kind of I mean, because of this political misjudgment that had, you know, given capital, everything and wanted while workers bailouts was temporary, you know, now it's like, Okay, well, like, please give us something for workers. You know, I think the the view had been that, like the election would be the leverage that, you know, pro worker interests would have over the federal political system, but that's not the case, actually, because the outcomes of elections aren't terribly responsive to the the well being of the population, which is a big problem that we should probably do something about at some point. But But, you know, so now it's like, Okay, well, we're sort of like pleading for scraps the way that we have been for the last decades, and everyone's reverted to, you know, basically versions of the EITC expansions that have been on their, you know, to do list for for a long time. So it's like, okay, you know, the wanks have guy kind of gotten back control in control of the message and the asks and whatever. And, you know, consequently, the agenda has gotten shittier.

Alexi 49:39

never a good idea to give the Wong's power. But now, like so far, I just want to recap for the audience. We have number one left anchor Steinbaum, synthesis of anti trust and democratic socialism, to new idea breaking news, let's make government responsive to the needs of the people. That's that's that's what we've so these two important things that we're offering now. But But no, I think first of all the point point very well taken that, you know, our favorite game about the Democrats, is it malfeasance and or is it malice? You know, is it is it just, you know, bad politics or or is it just intentional, you know, slap in the face to the working people of this country into the poor. So, so yeah, yeah, point point well taken that the the corporations were given a, you know, indefinite Lifeline, and then I think they accidentally helped the poor and helped the working class, probably because they didn't realize how low pain, you know, jobs were out there. Yeah.

Marshall Steinbaum 50:39

Yeah. I mean, that's exactly right. It was pretty clear at the time that like, there was just sort of No, I mean, I think the rhetoric in Washington is like, somewhat responsive to, you know, insofar as there's any responsiveness to workers, it's like, you know, people who are not precariously employed. So, you know, that I, you know, so it's like they don't it's like any job is a good job, or they are not, that's a little bit of an overstatement. But it's like, you know, what we want to prevent as people losing their jobs, as long as they have their a job, there'll be fine. And, you know, there's just a very, very little apprehension on the part of like, the policy elite of like, just how bad most jobs

Alexi 51:18

but look, Marshall, we all know, worst case scenario, as Mitt Romney said back in the day, if you're really in a tough situation, just sell your stocks if you have to just

Marshall Steinbaum 51:28

Yes, yeah, yeah, right. Right. Just that Yeah, Dad stock at American Motors or whatever, you know, what you can afford? Right? I

Ryan Cooper 51:33

mean, it was a tough thing to have to do. But sometimes you got to just bootstrap it.

Marshall Steinbaum 51:40

Yeah, so well, you know, now now, Romney is a resistance hero. He's doing everything he can to bring our Trump Reign of Terror to an end

Ryan Cooper 51:47

he is, thank thank God for him, honestly. Yeah, so so to, I guess, to kind of like, like, tie a tie that together a little bit. You know, like, the welfare state is, you know, just like a critical lifeline. You know, like the cares act shows, you know, that, that, that four decades of neoliberalism was all bullshit, actually, we could solve poverty quickly and easily, just by, you know, dumping money on people who don't have money. That's literally It's that easy. But I think, you know, the interesting thing to me about, like, this whole discussion about, like market regulation, and so on and so forth, is that, like, I'm pretty convinced that the, you know, in so far as your, the economy is based to some degree around, you know, private businesses, you know, doing their thing, competition is a is a fairly useful tool, if it's done, right. And that means competition, that's that that happens, you know, through a sort of regulated process, because you can have competition that just means trying to cheat, and like drive the other guy out of business, so you can seize more market share, you know, try and try to force companies to compete on price and quality. And that means big government, basically. You know, an example I've seen recently, you know, the computer chip market for for like desktop PCs. That's like a pretty concentrated market. But there is competition there between AMD and Intel. And Intel's had like a big chunk of you know, the marketplace for for many years, AMD has been sort of a laggard for the last couple years AMD like they basically just beat Intel, it's better, better chips for cheaper. And suddenly Intel's on the backfoot. And they're doing all this stuff, they're retooling their, their machine to try to sort of, like, exceed, and like, that, I think is a reasonable process, so long as it's not, you know, like, you don't you don't end up with competition that takes place like, okay, we're shipping all of our, you know, all of our factories to Tanzania, and we're just gonna pay everyone $1 you know, make them buy all their stuff in company script, that kind of competition. But, you know, and then also, you could, you could say, like, oh, we're going to set up something like the post office as explicitly a monopoly, but it's going to be a monopoly with a sort of government policy purpose, like everybody has to get the same service for the same price even if it's like ridiculously uneconomical to provide it in a certain location. And that's like a kind of different that's like about quality government and how do you set up a agency with some sort of a spirit a core that like, does a good job. But like, I think the, you know, my sort of like fundamental takeaway, and maybe you can sort of quibble with this or qualify, Marshall is that like, like, the anti trust, and, you know, breaking up, like, like full on monopolies and like forcing the businesses to compete decently and, you know, the sort of like welfare state, you know, social democratic vision, these things like there are two, they can be two great tastes that taste great together. And, you know, like, there's not necessarily a trade off. And then like, one could sort of enable the other. What do you think?

Marshall Steinbaum 55:40

Yeah, I mean, I think that you can have a, you know, what might be called Race to the Top type of competition, I'm not exactly sure what's going on in the, you know, desktop computer chip market, but like, branding, what you the way you characterized it, or you can have race to the bottom competition, which is basically about sort of chiseling out your company's own regulatory arbitrage, or like, You're the one who gets to run the taxi company, but not actually charge the regulated rate, or you're the one who locates the factory in Tanzania so that you can pollute all you want and pay your workers like crap. And then you know, then you're in, you know, quote, unquote, competition with domestic producers, you know, who are then obviously incentivized to do the same themselves, I have tended to move away from the concept of competition, exactly, in some ways, exactly. For the reason that you're saying it. And for the reasons I just said, which is that it is not, it doesn't really work as like, we want more of it, or we want less of it, because there's different forms of it, as we were just saying, Yeah, and, you know, in particular, I have moved away from that concept of competition vis a vis antitrust law, like I just don't agree, now, now I have come to the view that I don't agree that the purpose of the antitrust laws is to promote competition. I think it is because, you know, for the reasons like that the world in which, you know, a US domestic manufacturer relocates overseas to take advantage of poor environmental and labor standards, you know, that's like, an act, you know, that could be understood as an anti competitive act vis a vis the workers, but like a pro competitive act vis a vis competitors, potentially. And so I don't think like it's, you know, a policy regime that gives workers that gives companies the ability to undercut their own workers through the threat of outsourcing isn't about promoting competition or repeating competition, it's about, you know, who gets to decide and the economy who has power, as Sanjukta said, who, to whom are coordination rights granted. And so my view is like, antitrust has one disposition of the allocation of coordination rights or, you know, who gets to operate as a monopoly or as a dominant firm versus who is subjected to their domination, which is designed subjected to competition under the current way of doing things that would be workers, so like, a dominant employer, you know, subjects workers to competition, so the workers have plenty of competition, and that's what reduces their labor standards. And I think that is exactly what is kind of tripped up or created this false dichotomy between like, anti monopoly ism versus socialism, because from a workers perspective, more competition is bad. Because they, you know, that's exactly what the economy already consists of, whereas from a, you know, sort of corporate perspective, you know, exactly what characterizes the economy is a lack of competition, that is to say, you know, dominance, not just in any one market, you know, where, you know, many major industries are basically, you know, an oligopoly if not a monopoly, and then, you know, vertical integration and vertical control, you know, that subjects, disadvantage actors to competitive forces and insulates powerful actors from those competitive forces. And what we want is the erosion of the concentration of power, which is to say, to, at least, you know, through the mechanism of competition that would be to subject powerful actors to competitive forces and protect unpowerful actors from them.

Ryan Cooper 59:00

Well, well said. Go ahead. I was gonna just do a just out of left field kind of question about, because it seems like non domination seems to be the maybe the principle that would kind of work through the synthesis of democratic socialism and the antitrust, kind of coalitional movement. And what do you think? How would you understand that principle, working with other ideas that the left is is kind of fighting over whether it's job guarantee or UBI? You know, how do you think this overall leftist synthesis should think through what principles can help us kind of navigate these contests or which policies to to kind of fight over and propose as the most important to push for?

Marshall Steinbaum 59:48

Yeah, well, I absolutely do think that non domination is the principle that's at play here. And that's why I support both UBI a job guarantee and I don't believe that there needs to be a clash between those two things. I mean, I have often thought and if I, you know, had a vast research budget of my command, I would indeed, commission this, you know that there should be a sort of left pro labor like pro low wage labor agenda that consists of a UBI, like the cares act, except not just for unemployed people, but including them, a job guarantee, which is to save full employment, you know, macroeconomic commitment to full employment, and a $15, minimum wage, as well as the enforcement of other labor standards, like maximum hours, and, you know, safe workplaces and that sort of thing. All of those things together to me form like the tripartite are the three legs of the stool of like a, you know, pro labor left agenda as against the EITC. And basically anything that's conditional on supply, market labor for in order to receive benefits. So like all three of the things I mentioned, what characterizes them is rights, and entitlements accruing to the worker that's independent of any one employer. And that's all of that is at odds with existing policy orthodoxy, for example, the EITC, the other thing that I have written about a great deal is a student debt and labor market credential is Asian. So I interpret the rise of student debt as being basically the federal government's most ambitious labor market policy of the last few decades, which is the idea that like, oh, if people are earning enough in the labor market, they need more human capital, so they need more higher education, and we'll lend them the money to get that higher education, and then their earnings will go up, like that has, you know, kind of spiraled out of control, because people's earnings haven't gone up. So they're left with a bigger pile of debt than they would have had otherwise, and consequently, aren't paying it off. But like, all the real big reason why the whole, like student debt and Higher Education and Human Capital approach to labor market policy hasn't worked, it's because it also doesn't take into account employer power and the domination, that bosses are able to exercise over workers in a capitalist economy. So what the effect of that, you know, student debt thing in the labor market has been to basically shift the cost of training or being trained for your job or qualified for your job to individuals from employers or from, you know, the public higher education system, you know, these, this is just the transfer of those costs to the shoulders of the agent that's like least able to shoulder them.

## CASE

### 1NC---Case

#### Mutual aid as a survival strategy lets the state off the hook. It endgenders a charity economy that autonomizes political activity and allows hierarchies to re-assert themselves.

Dawson 20, author, activist and professor of English at the CUNY Graduate Center, and at the College of Staten Island, City University of New York. Dawson specializes in postcolonial studies, cultural studies, and environmental humanities (Ashley, “Interview: Ashley Dawson, Extreme Cities,” https://www.stirtoaction.com/blog-posts/interview-ashley-dawson-extreme-cities)

Later in the book you explore ‘disaster communism’, described as ‘the communal solidarities forged in the teeth of calamity.’ Could you explain this approach? In addition to what I was finding on the ground with Occupy Sandy activists, one of the main inspirations was Rebecca Solnit’s Paradise Built in Hell. The book is a good set of theoretical arguments, as well as a series of case studies of the moments when disasters, such as the 1906 San Francisco earthquake, lead to a breakdown of established social hierarchies and the state ceases to function. During these moments, people re-engage in mutual aid and you find a lot more social solidarity. Such moments of disaster can have a levelling effect, and to use the terms we’ve been criticising, they can produce quite a lot of resilience. Another way we could think about this is by drawing on Autonomy theory, which came out of Italy in the 1970s with an emphasis on working-class agency. It’s about how people can function outside of established institutions, whether it’s the state or trade unions - and how they can rely on self-help. So disaster communism can be seen as an example of applied Autonomy. In my book I explore how disaster communism can be really powerful in both the initial stages and the aftermath of a disaster, as people turn to one another in the absence of established authority. But as communities move on from bare survival to reconstruction efforts, the established hierarchies tend to reassert themselves unless there are very strong organisational forms, either born out of the disaster or reanimated, to challenge those with more resources as well as the forms of state power that entrench such inequalities. This reassertion of authority is what happened in Red Hook, Brooklyn, after Hurricane Sandy. Occupy Sandy’s efforts to work with people living in Red Hook social housing – the largest residential development in the borough – really got stymied by the local Democratic Party machine. Their representatives swooped in and worked with real estate developers and affluent people. Their rhetoric about Occupy Sandy activists as anarchists and hooligans scared people into not working anymore with activists. I think this example shows that mutual aid is not enough, that there has to be a reckoning with and democratisation of the State – in both its local form or at a more abstract level. So we need a disaster communist theory about how an upsurge in mutual aid can be made more durable.

#### Genuine equality relies on the rich giving up their power. That makes mutual aid self-defeating and political challenges to corporate power preferable

Geng 21 (Lucia, “Mutual Aid Goes Mainstream,” Fall 2021, https://www.dissentmagazine.org/article/mutual-aid-goes-mainstream)

Last spring, within hours of the University of Chicago’s announcement that classes would be held online, students created a Facebook group to coordinate mutual aid efforts. Even with finals right around the corner, UChicago Mutual Aid came alive with activity. Students eagerly offered and accepted support in the form of advice, essential supplies like food and moving boxes, and spreadsheets listing leads on resources like housing. What I witnessed at my college was just one example of the many mutual aid networks, both college-based and non-college-based, that sprung up across the country in response to the COVID-19 pandemic. Mutual aid, a radical practice that has been undertaken by marginalized groups for decades, became a mainstream buzzword almost overnight. Mutual aid efforts often arise during moments of crisis when those in positions of authority fail to help people, and when the importance of grassroots efforts comes into full focus. When the immediate crisis passes, groups may either fizzle out or choose to adapt to a new context. Today, the UChicago group is still active and boasts a membership of nearly 6,000 on Facebook, but the pace of its posts has slowed down. Scrolling through the public group, you might see questions or requests for help receive just a few responses or none at all, especially if the poster is not a UChicago student. As the new school year begins, however, there’s still a need for mutual aid. The pandemic revealed inequalities between students on campus that have not gone away. COVID-19 continues to take a toll on many college students, both physically and psychologically. What’s more, temporary measures that were intended to relieve stress—such as colleges choosing to adopt a universal pass/fail grading system—have all but faded away. Though students may no longer be scrambling in the same way they were last spring, many are now struggling to meet a new series of challenges. To learn how mutual aid groups are approaching their activities as students return to campuses, I spoke to organizers at six different universities. I found that even as donations slow down, many groups are eager to experiment with their structure and broaden the scope of the work they do. Students have found that mutual aid provides a unique way to build solidarity with others both on and off campus. Carleton Mutual Aid was founded in May 2021 by student organizers with Sunrise Carleton, an environmental justice activist group. They were inspired by a supply drive set up by Carleton College students to help those protesting the police killing of Daunte Wright in a nearby Minneapolis suburb in April. After seeing how students collected funds, food items, medical supplies, and hygiene products for protesters, organizers decided to set up a fund to meet daily needs on their campus. The mutual aid fund is only open to Carleton students. Requests are filled in a first-come, first-served order. The group doesn’t prioritize based on the type of need, instead choosing to trust that people who make requests for funds would truly benefit from them. So far, the fund has fulfilled students’ requests for things like groceries, travel expenses to and from campus, hospital bills, and sneakers. The group’s organizers told me they want to challenge the scarcity mindset that pervades campus: the feeling that one will never have enough of something, especially money. They also want to strengthen ties between campus community members. “I feel like the money that goes towards mutual aid blesses someone else in a way,” said Hannah Ward, a Carleton Mutual Aid organizer and second-year student. “Say you get money for your sneakers, then somebody’s like, ‘Oh, I love those sneakers.’ . . . I feel like it enforces a feeling of community.” The group also wants to promote the importance of wealth redistribution. Mutual aid “means an end or at least a step toward the end of wealth hoarding,” said Ellie Zimmerman, a recent Carleton graduate and former organizer with Sunrise Carleton and Carleton Mutual Aid. “If you have excess, there’s a lot better places that that could be sitting than your trust fund.” Carleton’s mutual aid group is relatively new. At Georgetown Mutual Aid, which was founded by students Megan Huynh and Binqi Chen in August 2020, organizers have been working long enough to encounter donation fatigue. Most of the mutual aid organizers I spoke with mentioned a slowdown in donations as the pandemic has continued. In response, groups have tried out a variety of new tactics to solicit contributions, including posting on social media, setting up systems for recurring donations, and expanding their fundraising outreach beyond students to professors. As an elite private institution, Georgetown has more than its fair share of well-off students. You might expect that proximity to wealth to simplify fundraising efforts, but that isn’t the case, according to Huynh. “We go to school with international royalty’s children or ambassadors’, or TikTok influencers,” she said, “but it is kind of interesting to note who is donating to mutual aid and who isn’t.” Huynh and Chen have found that it’s poorer students—those most in need of assistance from mutual aid themselves—who are the most likely to donate their time and resources. That sentiment was echoed by other organizers. These conditions present another challenge. “A lot of the people who need aid don’t have the time or energy to organize something like this,” said Mallika Luthar, a University of California, Berkeley student and co-founder of Mutual Aid at Berkeley. As a result, the group contacts relevant student organizations, like environmental groups and low-income support groups, to ensure that students who most need aid are aware of Mutual Aid at Berkeley’s resources. The group is also trying to tap into networks of students involved with tech and business activities on campus, who have access to bigger pools of funding. Student mutual aid groups will need to carefully consider how much time and effort to spend wooing potential benefactors. A large donation can go a long way, but it’s important that organizers not forget whom mutual aid is truly for: those who are the most vulnerable during a crisis. Mutual aid as a means to redistribute wealth is a worthy goal, but the practice can only go so far when it relies on the voluntary giving of the rich.

#### Black women can engage with the state in empowering ways.

Nash, 19—Professor of Gender, Sexuality, and Feminist Studies at Duke University (Jennifer, “love in the time of death,” *Black Feminism Reimagined: After Intersectionality*, Chapter 4, 121-126, dml)

Returning to the State

This book began with substantial engagement with intersectionality’s origin stories, examining how the question of where the analytic came from, who coined it, and who deserves “credit” for its rise and circulation have come to predominate in black feminist scholarship. Curiously, though, none of these widely circulating origin stories contend with intersectionality’s connections to the juridical, or think deeply about intersectionality as a legal project. Though this book eschews simple origin stories that presume that intersectionality has a singular history, in this section, I advocate for remembering intersectionality’s connections to critical race theory, and thus its intimate relationship with remaking law. I invest in this project because intersectionality has been swept into a larger black feminist conversation that presumes the violence of the juridical, ignoring both intersectionality’s loving investment in the juridical and the juridical as a potential site of loving practice. Put differently, in this section, I emphasize intersectionality’s location in critical race theory, in Left legal projects, to move beyond the now knee-jerk Left (and black feminist) sense that radical and transgressive projects are necessarily antistate. In place of this now familiar political terrain, I seek to ask different questions: Is it simply collusion or “cruel optimism” for black feminists to seek engagement with the state?31 Can we imagine black feminist engagements with the state as taking forms other than seeking redress and demanding visibility? Are there ways to imagine black feminist legal engagement that circumvent the uncomfortable and problematic position of being “at home with the law”? How can black feminists reimagine law as a site for staging productive intimacies and enacting radical vulnerabilities?

In its juridical iteration, intersectionality emerged in a moment where critical race theorists offered analytical tools to upend prevailing fictions of law’s objectivity, to reveal the quotidian nature of racism and sexism, and to argue for fundamental transformations in legal pedagogy. Critical race theory, then, was born of a sustained attention to law’s failures, even as it contained—at times—certain kinds of faith in law’s potentiality and promise. Critical race scholars were a post–Brown v. Board of Education generation who witnessed the end of the Warren court’s promises of integration and inclusion. They saw affirmative action rolled back, transformed from a substantive remedy for past and ongoing discrimination to a promise of “diversity” to benefit white students who would be changed into global citizens ready for corporate employment thanks to their “exposure” to socalled racial difference.32 They witnessed the ratcheting up of standards for proving employment discrimination from racially disparate effects to discriminatory intent, effectively making it harder for minoritarian plaintiffs to prevail in discrimination suits. They emphatically asked, then, whether the goal of antiracist legal scholars should be inclusion in white institutions or whether it should be, for example, the creation of robustly funded and supported black institutions. They interrogated whether the Warren court’s landmark decision in Brown would have better served its black plaintiffs if it equally funded black schools, rather than championing desegregation and then mandating integration at “all deliberate speed.” They debated whether affirmative action should be supported if the only logic to support it is “diversity,” where students of color provide a pedagogical value for white students. Critical race theory, then, was never an embrace of an ethic of inclusion, or even a form of advocacy for new forms of redress. Instead, it was undergirded by an investment in revealing that racial progress was the result of “interest convergence” rather than a genuine investment in antisubordination, and by a fundamental belief that law would look and feel different if it “looked to the bottom.”33

While critical race theorists offered critical interrogations of law’s imagined progress, treating it as evidence of US self-interest rather than a genuine investment in racial redress, they also routinely offered ways of imagining law otherwise, refashioning antidiscrimination law, conceptions of evidence, property, and contract. They imagined a form of law that eschewed color blindness and argued that any legal regime that sought to contend with American racial violence had to be deeply color-conscious to exact meaningful remedies. They advanced new methods—narrative, parable, allegory, speculative fiction, storytelling—in an effort to jam the fictions of objectivity and neutrality and to expose that law is itself a racial project, never removed from the racial regimes it purports to disrupt. In other words, they sought to use their locations in the legal academy and in the legal profession to radically remake law, to push the boundaries of how legal doctrine could be written, imagined, and enacted. They aspired to make law into something unrecognizable and unimaginable, to push at its very parameters in the pursuit of a “jurisprudence of generosity.”34

My entry point for thinking through law as a site of black feminist love-politics is through the work of Patricia J. Williams. Her book The Alchemy of Race and Rights is complex in its form and its argument—it is memoir, “diary,” legal treatise, and critical theory at once. Williams presents herself as professor, consumer, daughter, granddaughter, train rider, and “crazy” black woman exhausted from the ordinary and spectacular raced and gendered brutalities of American life and the project of teaching law at a historically white law school. The project, then, is a rumination on the felt life of racial and gendered violence, and a critical analysis of the myriad spaces where this violence unfolds, from the media onslaught against Tawana Brawley to the experiences of being a black female faculty member at a law school.

Williams’s inquiry, though, is not simply about documenting the ubiquity of racial and gendered violence but also about engaging and describing the lived experience of racialized and gendered vulnerability, what she terms “spirit murder.” For Williams, “spirit murder” is the psychic and spiritual wounding that unfolds as a result of racial violence. “Spirit murder” describes the wounds left on the flesh, psyche, and even soul of those who experience violence and the wounds, often invisible, that haunt perpetrators of violence, including a willingness to accept, and to render unseen, those who are dispossessed. Williams’s task, then, is to imagine what law could look and feel like if it accounted for “spirit murder,” a form of violence that she argues includes “cultural obliteration, prostitution, abandonment of the elderly and the homeless, and genocide. . . . What I call spirit murder—disregard for others whose lives qualitatively depend on our regard—is that it produces a system of formalized distortions of thought.”35 Williams argues that “we need to elevate spirit murder to the conceptual—if not punitive— level of a capital moral offense. . . . We need to eradicate its numbing pathology before it wipes out what precious little humanity we have left.”36 Williams’s conception of “spirit murder” imagines law’s capacity to remedy forms of violence against the psyche and soul, a terrain that has been unimaginable to law precisely because of its commitment to remedying only visible and legible harms, and law’s ability to be mobilized “conceptually”— but not punitively—to respond to violence. In other words, the endeavor of the text is to imagine a legal project capacious and creative enough to attend to what it has always ignored: the violence inflicted on the psyche. Williams effectively invites us to imagine how we might feel differently toward each other, and toward law itself, if we had legal obligations toward mutual regard, if we knew that law took seriously spirit murder.

If Williams seeks to use law to exceed what it aspires to do, to respond to the “cultural cancer” of spirit murder, her book also contains a resounding, and even surprising, redemption of rights as a key strategy for reforming law. An embrace of rights might sound like a deeply conventional strategy, mobilizing law to do what it has long claimed to do on behalf of racialized and gendered minorities: confer rights. Despite her lengthy engagement with state violence, her exacting critique of how law permits rather than redresses spirit murder, Williams ends not with an abandonment of the state but with a deep affection for what rights could accomplish. She writes:

The task is to expand private property rights into a conception of civil rights, into the right to expect civility from others. . . . Instead, society must give them [rights] away. Unlock them from reification by giving them to slaves. Give them to trees. Give them to cows. Give them to history. Give them to rivers and rocks. Give to all of society’s objects and untouchables the rights of privacy, integrity and self-assertion; give them distance and respect. Flood them with the animating spirit that rights mythology fires in this country’s most oppressed psyches, and wash away the shroud of inanimate-object-status, so that we may say not that we own gold but that a luminous golden spirit owns us.37

If critical legal studies called for the abandonment of investment in rights, treating rights as relatively unsuccessful in securing social change and as promoting problematic conceptions of individualism, Williams makes a plea for a dramatic expansion of rights and a surprising reconceptualization of the labor of rights. Rights, she argues, should not be the purview of those who can explicitly and legibly name harm. Cows, history, and rocks should have rights, including rights to “privacy, integrity and self-assertion.” Rights should not be “reified” but generously bestowed upon everyone and everything; rights should not be used to shore up ideas of property and ownership, to allow us to claim that “we own gold,” but instead to ensure a deep spiritual connection between us. In so doing, law could remake “society,” transforming its investments in rights as something that protects property holders into rights as something that can ensure our mutual accountability, and reminds us of the “luminous golden spirit [that] owns us” all.

It is easy to read Williams as optimistically rehabilitating rights from the critical legal studies’ critique of rights, and problematically investing in precisely the doctrinal formulation that has consistently failed minoritarian subjects. In this reading, Williams is imagined as paradoxically investing in precisely the site of violence she carefully documents with far too little explanation for how rights can circumvent the problems of racism and sexism she delineates. Yet I read Williams’s visionary account of rights differently. For her, law can be mobilized not to produce new causes of action, to simply make visible new wounded subjects who can make appeals to redress, but to imagine new and radical vulnerabilities. As it is currently structured, property deeply organizes sociality, and law operates to protect property from trespass and theft. Thus, law operates to create categories like property holder (owner) and trespasser (thief), and to organize the social world around proximities to ownership. Williams uses her capacious conception of rights to imagine another way of organizing sociality: around vulnerability. Indeed, Williams asks: How are we bound up with others? What is our responsibility to ensuring the vital “spirit” of others, and to demanding the protection of our own “spirits”? What happens when we harm things that can’t articulate injuries (trees, rocks, rivers) but can only make that injury visible and oftentimes in ways that we refuse to recognize, or that might even make that injury visible in another time, in decades or centuries when we are not even here to be accountable? What happens when we take responsibility for our capacity to wound and for the histories of wounding and violence that have unfolded, often in our names? And what happens when law becomes a critical tool in making visible mutual vulnerability, in insisting that we recognize that we can “undo each other,” and in demanding that we take seriously our indebtedness to each other? For Williams, then, expanding rights becomes a strategy for transforming law to be a space that enshrines a vision of interdependence and shared vulnerability.

I begin my investigation of the possibility of rooting black feminist lovepolitics in law with Williams’s visionary work because it reveals the potential of black feminist legal scholarship that fundamentally reorients law around ethics of vulnerability. This is work that expresses a fundamental faith in law’s capacity to perform different kinds of justice work, even as it recognizes how law is often mobilized as an agent of inequality and injustice. Like Williams’s radical remaking of rights, Crenshaw’s conception of intersectionality tugs at the seams of law, working within its confines to radically unleash its transformative capacity. As I explained earlier in the book, intersectionality is primarily remembered for its now widely circulating accident metaphor, where discrimination is imagined as traffic flowing through an intersection. It can move in one direction, another direction, or both, and an “accident” can occur on either street or in the intersection. According to this logic, discrimination can be race-based, gender-based, or race-and-gender-based, yet the possibility of raced and gendered discrimination is rendered impossible by antidiscrimination law that actively refuses to account for this form of violence. As Crenshaw notes, “Judicial decisions which premise intersectional relief on a showing that Black women are specifically recognized as a class are analogous to a doctor’s decision at the scene of an accident to treat an accident victim only if the injury is recognized by medical insurance.”38 Intersectionality, then, spotlights law’s refusal to see black women’s race- and gender-based injuries.

Many have envisioned intersectionality’s mandate as the insertion of black women into existing antidiscrimination law, as a call for antidiscrimination law to abandon its race or gender logic and instead embrace a race and gender logic. Yet, as Crenshaw’s second metaphor reveals, antidiscrimination law is constructed around leaving the multiply marginalized in the proverbial basement. Put differently, antidiscrimination law itself is constructed around remedying only certain forms of discriminatory activity and is designed to refuse to recognize and redress discrimination against the most vulnerable. Intersectionality, then, is not a call for inserting black women into a preexisting legal regime, precisely because that regime is designed to refuse to see black women. Instead, it is a tactic of making visible black women’s status as witnesses who can name and describe the basement, which is not merely a social location but a space produced by law’s doctrinal failures.

If intersectionality embraces black women’s social location as a juridical starting point, it also advocates for tailoring law to address injuries in particular ways. In other words, it offers a vision of law that is rooted in flexibility and customization, in responding to particular lived experience. In her second article on intersectionality, “Mapping the Margins,” Crenshaw reveals not only that law ignores black women’s experiences of injury but also that intersectionality compels state interventions that more appropriately respond to black women’s particular experiences of injury. In the context of domestic violence, for example, Crenshaw shows that meaningful legal intervention requires an attention to race, gender, class, and immigration status, and thus state intervention might need to take different and multiple forms to produce substantive justice. Intersectionality, then, requires a commitment to witnessing, to empathic looking, that responds not with the messy bluntness that law so often deploys in the name of fairness and uniformity. Instead, intersectionality calls for imagining legal action that can be individualized, intimate, and rooted in lived experience. This work has been expanded by other scholars, especially those working in the context of domestic violence law, including Linda Mills and Elizabeth Schneider, who have considered how mandatory arrest/no-drop policies ignore the particular experiences of women of color who may have to weigh their own distrust of the state, the necessity of a partner’s income to survive, and the potential stigma, shame, or violence of calling law enforcement against a desire for bodily integrity and safety. As Mills suggests, a vision of legal intervention that is survivor-centered and survivor-guided, that recognizes the differently situatedness of each subject who engages with the state, is the only way to ensure justice, particularly in the context of intimate life. Similarly, Crenshaw’s work asks for law to witness violence as it unfolds and to respond contextually, to recognize that uniformity might not be the hallmark of fairness and equity. Ultimately, Crenshaw’s vision of the demands of intersectionality in the context of violence has underscored the importance of law as a tool that sees, witnesses, and even willingly inhabits the social locations of the multiply marginalized.

If it is easy to dismiss Williams’s embrace of rights as overly optimistic in the face of ample description of law’s failures, it is all too easy to treat Crenshaw as an inclusionist, one who imagines intersectionality as a strategy that grants black women entry into the problematic logics of antidiscrimination law. Yet in my reading of intersectionality, Crenshaw’s vision is not one of including black women in existing legal doctrine, or simply expanding legal doctrine to make space for black women’s particular experiences of discrimination. Indeed, Crenshaw ends “Demarginalizing the Intersection” with a personal account that underscores her deep commitment to unsettling inclusionary politics. She describes an experience in which, as a law school student, she was invited to a prestigious Harvard men’s club, one that was formerly all white, to celebrate the end of first-year exams. Upon her arrival, her friend—a member of the club—quietly mentioned that he had forgotten to share an important detail: Crenshaw would have to enter the club through the back door because she was a woman. She and her friends had long assumed that it was their blackness that would bar them from the club, but it was her womanhood that required her to use the back door if she wanted entry into the club. Crenshaw ruminates on this experience as emblematic of the importance of intersectional analysis, noting that “this story does reflect a markedly decreased political and emotional vigilance toward barriers to Black women’s enjoyment of privileges that have been won on the basis of race but continue to be denied on the basis of sex.”39 Yet what interests me about this account, and how it animates the end of the article, which borrows from Paula Giddings’s work to conclude “when they enter, we all enter,” is that intersectionality is not a tool Crenshaw uses to advocate access and entry. In other words, she does not suggest that an intersectional analysis demands her inclusion—and all black women’s inclusion—in a structure constructed around black women’s exclusion. Instead, the story reveals that battles for entry are always imperfect, exclusionary, and problematic. To be granted entry to a space because of blackness and to be barred entry to that same space because of womanhood speaks to the flimsiness of entry as a form of politics, precisely because inclusion always hinges on a system of exclusion, hierarchy, and valuation. Ultimately, intersectionality reveals both the limits of juridical projects and the possibility of mobilizing law to exceed law’s own critical desires. In Crenshaw’s hands, intersectionality invites a legal project that takes seriously black women’s witnessing (and black women as witnesses, something crucial in a juridical system that continues to disbelieve black women), that invites an attention to a literal, material space—the intersection, the basement—that black women know, experience, and inhabit.

In this section, I ask what might happen if black feminists treated intersectionality’s legal roots not as an embarrassment but as a crucial site of the analytic’s transformative potential. Indeed, in reading Crenshaw’s conception of intersectionality alongside Williams’s work on rights, and in emphasizing intersectionality’s roots in critical race theory, I treat intersectionality as an analytic that radically occupies law, takes hold of legal doctrine and refuses its conceptions of neutrality and uniformity as performance of justice. It is, then, a strategy of demanding that law move otherwise, that it center witnessing and vulnerability, that it encourage forms of relationality and accountability that jettison logics of contract and property. My reading insists that black feminists refuse well-rehearsed dismissals of intersectionality as an inclusionary project (dismissals that are all the more possible to rehearse because this is how intersectionality so often circulates in the university) that seeks to insert black women’s bodies into otherwise problematic structures, and instead advocates treating intersectionality’s juridical project as the very heart of its radical political agenda. It is intersectionality’s capacity to index vulnerability and witnessing, to imagine legal doctrine as centering those ethics (even as law might refuse those efforts), that makes intersectionality a space that resonates deeply with black feminism’s ongoing efforts to construct a political agenda rooted in love.

Risk and Promise

What if we refused the lure of negative affects, the tendency to grieve and mourn black feminism and its analytics? What if we rejected both the notion that blackness is synonymous with death and the idea that black feminism is dead or dying? My call for this rejection is not meant as a wholesale rejection of afropessimism, and its attendant affects of grief, loss, mourning, and despair. Nor is my plea here rooted in a sense that negative affects are per se problematic; indeed, the work of a host of scholars including Ann Cvetkovich, Heather Love, and Sianne Ngai has been to reclaim negative affects and to mine these feelings for their productive, world-making potential. Instead, my call is for us to consider why the position of death has become so alluring in this moment, particularly for black feminists who have made a practice of lamenting the slow and steady demise of our tradition. This chapter, then, aspires to perform letting go by suggesting another way to feel black feminism, one rooted in love rather than territoriality and defensiveness. Indeed, I argue that remembering intersectionality’s juridical orientations, and recovering them rather than eschewing them (even in a moment where law is treated as the paradigmatic site of antiblack violence), might allow black feminists to encounter the broad sweep of our transformative call for love-politics. In so doing, I emphasize that law might be a space of black women’s survival rather than simply the site of black women’s wounding. Moreover, I underscore that a space that black women did not author, and that was created largely with the interest in enshrining black women as property rather than as subjects, might become a site that allows us to imagine other ways of being and feeling black feminist. As I argue, black feminism’s long-standing commitment to lovepolitics, to ethics of mutual vulnerability and witnessing, is echoed by critical race feminist legal practices, including Williams’s expansive investment in rights and Crenshaw’s engagement with intersectionality as a critique of inclusionary politics. What both share are demands that law imagine itself otherwise, that it unfold and move in ways that might seem contrary to its fundamental project. These are demands that law acknowledge the failures and short-sightedness of inclusion and redress projects, and that law instead imagine its radical work to be an embrace of ideas of intimacy, proximity, vulnerability, and mutual regard. Reanimating black feminist engagement with law is particularly important because it upends the long-standing tenet that black women’s freedom comes exclusively through spaces that we self-authored, and, correlatively, that sites historically constructed to secure our status as property can never become locations where we stage our liberation. My inquiry shows otherwise and argues that freedom and radical black feminist politics can be rooted in myriad sites, including spaces that have been rife with our own subordination. Indeed, my engagement with law seeks to rescue law’s status of death in black studies, tracing how it can be a location of radical freedom-dreaming and visionary world-making rather than simply a death-world and the paradigmatic site of antiblackness.

#### Micropolitics turns into conformity and *enclave politics*.

Myers 13, Associate Professor of political science and gender studies at the University of Utah (Ella, *Worldly Ethics: Democratic Politics and Care for the World*, p. 46-49)

The therapeutic ethics advanced by Foucault and Connolly resonate strongly with dominant features of American culture. In particular, therapeutic ethics echoes a widely held popular belief, captured in this chapter's second epigraph, that working on oneself is the path to broader social change. This view is expressed quite clearly today in the doctrine of ethical consumerism, which holds that individuals should critically reflect on their consumption practices, making changes in themselves and in their personal conduct (namely, in what they buy) in order to generate collective change. In addition to expressing the striking and disturbing conviction that a primary way of shaping the self and becoming a better person is through purchasing commodities, this orientation rests on the belief that each individual's action will additively amount to something greater, producing transformation on a large scale. This is a more simplistic model than Connolly's in that it recognizes no difference between micropolitics and macropolitics, treating the latter as simply the cumulative result of the former. There are, nonetheless, real similarities between Foucauldian inspired ethics and the more generalized conviction that transforming oneself is the most important and even the most politically significant project a person can undertake.

Even though Foucault's and Connolly's accounts of ethics may not intend to further the prevalent popular belief that you change the world by changing yourself, conceptualizing ethics primarily in terms of self intervention is dangerous in the context of an American cultural environment that can fairly be described as narcissistic.1l5 There is no doubt that the Foucauldian-inspired arts of the self Connolly advocates are meant to challenge reigning ways of being and to transform individuals in ways that enable them to engage more effectively in collective projects, including critical and oppositional endeavors that aim to alter status quo arrangements. Yet the massive popularity of self-help programs disseminating the view that worldly events are the direct result of one's personal thoughts, in conjunction with capitalist ideologies that tend to reduce the aesthetics of existence to the acquisition of a lifestyle through shopping, along with many other cultural influences that promote questionable techniques of the self, should make one hesitate before embracing an ethics that focuses so heavily on concern with oneself.1l6 Even Connolly's version of therapeutic ethics, which he wants to demarcate from unappealing forms of self-indulgence, runs the risk of being captured by prevailing habits and beliefs that can render arts of the self nondemocratic, even antidemocratic.

Some of Connolly's own formulations bring this danger into relief. For example, Connolly sometimes uses the term micropolitics to refer not only to the self's reflexive tactics but also to small-scale intersubjective relations and projects that might not typically be recognized as political in nature but which Connolly maintains can support and enhance macropoliticsP7 Micropolitics of this sort are already "ubiquitous," but they can be developed, readers are told, in ways that are "more or less conducive to democratic politics."1l8 This dimension of micropolitics is sometimes depicted by Connolly as a bridge connecting concentrated work on the self to organized forms of collective citizen action. But the concrete examples of micropolitical activity that he gives, even those that extend beyond the self's relation to itself, raise new doubts about how resistant or transformative such activity really is. Indeed, some of what Connolly has in mind seems depressingly adaptive to contemporary arrangements, considering how focused his examples are on individual lifestyle choices rather than on the admittedly more difficult problem of how to mobilize energies for more collaborative, oppositional, and inventive endeavors. Writing of micropolitics, Connolly counsels, "If you are in the middle class, buy a Prius or a Volt and explain to your friends and neighbors why you did; write in a blog; attend a pivotal rally; ride your bike to work more often; consider solar panels; introduce new topics at your church." While these things may be worth doing, it is not clear why one should believe they will foster an urge to "participate in larger political assemblages in more robust ways," as Connolly wagers.ll9 Indeed, these recommendations seem to reinforce the belief that political change is a happy by-product of small decisions made by each individual. Despite Connolly's best intentions and his ambitious calls for broad transformation in the direction of deepening pluralization, greater economic equality, and less vengeful foreign policy-the therapeutic ethics he endorses is too easily absorbed, even co-opted, by a dominant culture that rewards forms of preoccupation with the self that do little to facilitate associative democracy.

This point seems to be unwittingly made, in a slightly different context, by Cressida Heyes's Self-Transformations: Foucault, Ethics, and Normalized Bodies. Heyes's stated objective is to rescue Foucault's work on ethics from misreadings that liken self-care to self-indulgence, in order to defend the importance of "somaesthetics," in which the self strives to cultivate a body in ways that are resistant to normalization. Yet although Heyes is devoted to the idea that ethical self-diSCipline, performed by the self on the self, can be an "art of living with greater embodied freedom," the vast majority of the book is spent investigating, in great detail, case studies involving contemporary practices of askesis (sex reassignment surgery, Weight Watchers, and cosmetic surgery), which, Heyes convincingly argues, help to produce "docile bodies."12o So although Heyes continues to hold out the hope that concentrated work on the self, and specifically on one's body, can serve as a site of resistance against normalizing power, the overwhelming sense conveyed by her research is how readily and thoroughly care for the self is promoted and practiced in conformist, "self-absorbed" ways.l21 There is little acknowledgment of the difficulty her examples pose to her celebration of a transgressive, liberating somaes- thetics. What does it mean to endorse an ethics focused on rapport asoi and on "somatic askesis" in particular, in the context of a society that, by Heyes's own account, obsessively and successfully markets forms of selfcare that produce compliant and often solipsistic selves? Why should one believe that Heyes's preferred example of good somatic self-discipline, yoga, is somehow safe from the normalizing influences so well documented in her treatments of sex reassignment surgery, organized weight loss, and cosmetic surgery? Like Connolly, Heyes seems to neglect the way in which even the best-intentioned calls for care of the self may still be too complicit with an American culture that celebrates and aggressively markets depoliticizing modes of self-care.

Still, the appeal of therapeutic ethics is undeniable. It soothes with the promise that one need not get tangled up in the messy, fraught world of intersubjective political struggle in order to engage in politically meaningful action. Whether tending to the self is seen as synonymous with politics, as in the popularized version of therapeutic ethics, or whether it is understood as a precursor to collective endeavors, as in Connolly's view, the suggestion that one ought to begin with focused attention on oneself is comforting. It spares one the challenges of attempting to address a public problem by acting in solidarity with and in opposition to other citizens, where there may be no assurance of success and when fatigue, disappointment, and frustration are likely. When the political landscape looks bleak-because there are few opportunities for ordinary citizens to govern themselves, because of growing corporate influence over politics at all levels, or because of any number of other depressing facts-therapeutic ethics reassures with the idea that one can be an engaged citizen all by oneself.

#### Movements fail absent state engagement ⁠— wholesale abandonment abandons important networks for change; exploring the process of the state assemblage better enables dissident energies

<<viewing states as inherently violent and abandoning them risks ceding the political towards elites; drawing a strict divide between state and non-state politics ignores their interconnectedness ⁠— rather than complete rejection, society should revise it via progressive politics>>

<<connecting radicalism with the state can highlight the connections between the two agents and propel dissident movements>>

<<this ‘no links” their offense because our argument is only that the government is a useful heuristic for radical politics, but not a prescriptive claim about the content of movements>>

Cooper 16, Professor, Gender and Sexuality, Law, Politics and Culture, Legal Theories and Philosophy, Kent Law School (Davina Cooper, 6-20-2016, “TRANSFORMATIVE STATE PUBLICS,” New Political Science 38(3): pp. 315-334, doi:10.1080/07393148.2016.1189028)

The reason for these conceptual moves lies in the state’s importance for a progressive transformative politics. In the global north, left-wing critiques of the state from Marxist, anarchist, feminist, queer, and postcolonial perspectives are extensive and hard-hitting. Modern states are criticised for their repressive, coercive, regulatory, functional, and extractive practices, particularly in relation to penal policy, workfare, market enhancements, welfare, privatisation, and coercive-military engagements. While some work critically responds to particular state developments and policies, an important current in critical work treats capitalist states or, indeed, all states as inherently oppressive. But not all critical and progressive work “writes off” the state. While this article is attuned to the concerns of anti-state scholarship, it also shares an anxiety that politically abandoning the concept of the state risks withdrawing important organisational scales for planning, redistribution, and decision-making; assumes a clear division between state and non-state practices and politics; and gives up the state to elite and dominant forces; leaving progressive constituencies with a set of “less than the state” institutions. But holding on to the state does not mean holding on to a particular apparatus, institutional structure, set of functions, or even scale. First, as different writers have explored, the structures, systems, and functions of the state can be revised in more progressive ways. Second, what can also be revised are our conceptions of what it means to be a state: specifically, what states do, what makes them up, and how they interface other aspects of the social. Contemporary scholarship approaches the state conceptually in ways too varied and extensive to set out fully here. Academics diverge on whether the state is an actor, organisation, structure, field, intangible effect, or idea; on its functions and role; on the degree, character, and conditions of its autonomy or boundedness; and on its power, composition, ethos, and modalities of change. The scale of divergence between treating the state as institutional machinery, an organic formation encompassing civil society, and a relation between classes reveals the state’s conceptual plasticity as well as the political stakes in how it is framed. This is not just a scholarly dilemma. Material effects follow from how states are imagined by officials, politicians, non-governmental organizations (NGOs), and others, as the recent development of neoliberal statehood reveals - a political-economic project firmly embedded in, and supported by, competitive marketized conceptions of what states should and could become. In their work on the economy, JK Gibson-Graham set out to think differently about its present forms. Instead of imagining an ideal or socially transformed future economy, Gibson-Graham reimagine the economy as it is. Their depiction of contemporary economic relations provides a purposive challenge to the “naturalized dominance of the capitalist economy” as they seek to “make a space for new economic becomings”. This article takes a similar approach. It seeks to reimagine the state as it is, challenging the assumption that the state is only made up of dominant interests, beliefs, systems, logics and practices. It aims to support progressive state thinking by foregrounding the state’s dissident and transient parts. While from a global perspective, some progressive initiatives and policies seem to be driven by centralised, unified states asserting their will, this seems less evident in contemporary neo-liberal democratic states of the north. Here, progressive developments frequently appear as fleeting, oppositional activities in the interstices of dominant state practice. Approaching the state in ways that recognise dissenting, minority beliefs, values, interests, and forces as part of what composes it, of course, does not mean dissent is inevitably left-wing. There are many instances of conservative dissident state action - not least those early 21st century state registrars who refuse to marry gay couples. Publics, as I discuss, can also take a conservative form, legitimising and entrenching authoritarian, hierarchical, and exclusionary state practices. However, the dissident publics addressed in this article, namely those which seek to transform social and political practice in progressive ways, are vitally important in rendering states relevant to the left through their emphasis on the commons, liberation, and collectively held public responsibilities. In this way, publics provide a counterpoint to the increasing entanglements and alignments between liberal post-industrial states and commercial interests, something Bonnie Honig also explores in her work on “public things” as objects of democratic desires and affections. Publics provide a counterpoint to the assumption that people’s desires and affections are exclusively embedded in individuated lives and choices. This does not mean extrapolating a universal common good from differentiated interests, a process that tends to reinforce already hegemonic norms. The phrase publics rather than public or public sphere emphasises plurality as Squires’s work on black publics explores. But plurality also does not have to mean group-segmented interests. What the concept of publics, as developed here, offers, is a way of framing concerns and political projects, from sexual liberation to “no borders” migration, as matters of public concern and interest. But why treat such publics as parts of, or as intimately connected to, the state? Publics may emphasise the collective, open-ended character of concern-driven social action, but what is gained by suturing publics to the state? In the face of the counter-claim that the political value of publics, and particularly radical publics, comes from their independence and state-distance, I want to propose three reasons for foregrounding a state nexus. First, it illuminates the networks that form around progressive or dissident policy ideas within state formations. This claim echoes Samuel Chambers’ approach to the work of radical political theorist Jacques Rancière. Against interpretations of Rancière which divide institutional order from democratic politics, Chambers interprets Rancière to suggest that politics - the disruptive and challenging assertions made by the excluded in equality’s name –is always entangled with the “police” order rather than separate from it. Focusing on state publics then provides a way of tracing the ebb and flow - the transformations, silences, and erasures - that shape radical politics, as dissident political currents weave through everyday institutional “police” life. Second, tying transformative publics to the state highlights how progressive and dissident action takes up and draws upon state-generated statuses, access, and resources. Reading such action as resistance, necessarily located outside centres of power, can obscure and attenuate the power that subordinate forces can and do make use of through their state location – whether as street-level workers, school students, or prisoners. Third, recognising the state-shaped character of social life makes it possible to explore the complex ways state and other (including grass-roots) governance logics and processes combine rather than assuming they meet as discrete independent forces. I return to these claims in the third section of the paper which explores how transformative publics connect to the state. However, before doing so, I want to briefly situate my approach to the state, and then turn to transformative publics.

States and Their Parts

For many critical scholars, state formations in the global north represent historically evolving institutional structures anchored in prevailing social interests and logics, most notably capitalism, colonialism, and patriarchy. While much of this work remains with large abstract categories, a different contemporary current, drawing on assemblage theory, has sought to trace how the imbrications between political governance and dominant social relations operate at a higher analytical magnification. For my purposes here, what an assemblage approach usefully contributes is a way of understanding the diverse elements that make up contemporary and historical states – from practices, systems, buildings, computers and budgetary statements to laws, personnel, recipients, feelings, utterances, and sounds. While assemblage-based writing on states (or political rule) draws on different genealogies (including that of Foucault, Deleuze and Guattari), one influential line comes from Actor-Network Theory (ANT), a methodological framework that focuses on how networks made up of diverse “actants” (elements that contribute to action through being part of an actor-network) get built, maintain themselves, and fall apart. This article does not take up and apply ANT; nevertheless ANT-influenced state scholarship is helpful here. According to Passoth and Rowland, “seeing the state as a network offers a process-oriented view of political institutions and political structures, which explicitly challenges the conceptual apparatus through which the state can be thought of as a monolithic actor. Rather than seeing the state as a stable and static political entity, the network approach sees statehood as a much more contingent and unstable process of governance.” Other state literatures also focus on process, change, and instability; however, treating the state as an assemblage foregrounds the work involved in creating linkages and connections as political projects bring new elements into the network and eliminate (or abandon) others. Assemblage approaches foreground composition. Denaturalising taken-for-granted notions of what is part of the state network (and what is not), assemblage readings highlight unexpected, heterogeneous and changing state parts. But in making room for these unexpected state parts, an assemblage approach also generates some vexing questions: what makes a network a state network; when is it the state rather than something else being performed? If dissident forces “act”, when do their actions count as state action? These questions cannot be resolved empirically; they depend on how the state is conceptually framed: whether it is defined primarily by its historically evolving functions, by its form, purpose, or in some other way - for instance, in terms of how it is recognised, spoken for or hailed. Conflicts over definition, which of course extend to conflicts over how to identify which particular forms, functions, and effects are state ones, come to a head in relation to the capacity of gendered, racialized capitalist states to advance subordinate interests, a subject of intense debate amongst left-leaning scholars and activists. Can states act in ways that are genuinely progressive, or are such actions necessarily temporary and expedient – intended to mask or legitimate the state’s “real” interests and agendas? How this is answered depends on how the conceptual contours of stateness are drawn. In this article, exploring how states might contribute to progressive politics, I work from the premise that states, as political governance formations, condense the social relations of their environment, and this includes the conflicts and challenges present there also. In other words, progressive and dissident agendas and forces exist within states, even if they are usually overruled or squashed. But do such forces merely function within states or are they also part of states? Passoth and Rowland argue that states should be approached not as “containers for political action, but registers of political actors, networks and actions.” Thus, instead of assuming radical forces operate either outside the state or on its terrain, it may prove more productive sometimes to identify such forces (with their beliefs, values, actions and ethos) as state parts - challenging depictions of the state as “an inert structure that somehow stands apart from individuals, precedes them, and contains and gives a framework to their lives.” But does this mean everything is part of the state? According to Patrick Carroll, “every aspect of the built environment, from the sewer trap under every kitchen sink to the roofs over our heads… … can be seen… to constitute the reality of the state”. Joe Painter explores how states are symbolically present, and constituted, through a huge variety of everyday practices and mechanisms that might include passports, drivers’ licenses, and manufactured goods as well as border crossings, witnessing a crime or participating in a contract. But locating state presence within everyday life does not mean states necessarily saturate, monopolise, and dominate social practice. Social forces and things can be parts or carriers of state formations when they participate in processes of political governance, while still participating (including simultaneously) in other kinds of action. States also contribute to diverse actor-networks – from the regional assemblages Allen and Cochrane discuss, with their mix of elements from state, agency, and business systems, to the “mash-ups” of state and grassroots governance addressed at the end of this article.

#### Extra-legal action fails---it gets co-opted as warped to existing structures of power.

**Lobel 7**, Assistant Professor of Law, University of San Diego (Orly Lobel, THE PARADOX OF EXTRALEGAL ACTIVISM: CRITICAL LEGAL CONSCIOUSNESS AND TRANSFORMATIVE POLITICS, Harvard Law Review, 2007, Vol. 120)

Both the practical failures and the fallacy of rigid boundaries generated by extralegal activism rhetoric permit us to broaden our inquiry to the underlying assumptions of current proposals regarding transformative politics — that is, attempts to produce meaningful changes in the political and socioeconomic landscapes. The suggested alternatives produce a new image of social and political action. This vision rejects a shared theory of social reform, rejects formal programmatic agendas, and embraces a multiplicity of forms and practices. Thus, it is described in such terms as a plan of no plan,211 “a project of pro- jects,”212 “anti-theory theory,”213 politics rather than goals,214 presence rather than power,215 “practice over theory,”216 and chaos and openness over order and formality. As a result, the contemporary message rarely includes a comprehensive vision of common social claims, but rather engages in the description of fragmented efforts. As Professor Joel Handler argues, the commonality of struggle and social vision that existed during the civil rights movement has disappeared.217 There is no unifying discourse or set of values, but rather an aversion to any metanarrative and a resignation from theory. Professor Handler warns that this moveaway from grand narrativesis **self-defeating** precisely because only certain parts of the political spectrum have accepted this new stance: “[T]he opposition is not playing that game . . . . [E]veryone else is operating as if there were Grand Narratives . . . .”218 Intertwined with the resignation from law and policy, the new bromide of “neither left nor right” has become axiomatic only for some.219 The contemporary critical legal consciousness informs the scholarship of those who are interested in progressive social activism, but less so that of those who are interested, for example, in a more competitive securities market. Indeed, an interesting recent development has been the rise of “conservative public interest lawyer[ing].”220 Although “public interest law” was originally associated exclusively with liberal projects, in the past three decades conservative advocacy groups have rapidly grown both in number and in their vigorous use of traditional legal strategies to promote their causes.221 This growth in conservative advocacy is particularly salient in juxtaposition to the decline of traditional progressive advocacy. Most recently, some thinkers have even suggested that there may be “something inherent in the left’s conception of social change — focused as it is on participation and empowerment — that produces a unique distrust of legal expertise.”222 Once again, this conclusion reveals flaws parallel to the original disenchantment with legal reform. **Although** the new extralegal frames present themselves as apt alternatives to legal reform models and as capable of producing significant changes to the social map, in practice they generate very limited improvement in existing social arrangements. Most strikingly, the cooptation effect here can be explained in terms of the most profound risk of the typology — that of legitimation. The common pattern of extralegal scholarship is to describe an inherent instability in dominant structures by pointing, for example, to grassroots strategies,223 and then to assume that specific instances of counterhegemonic activities translate into a more complete transformation. This celebration of multiple micro-resistances seems to rely on an aggregate approach — an idea that the multiplication of practices will evolve into something substantial. In fact, the myth of engagement obscures the actual lack of change being produced,

while the broader pattern of equating extralegal activism with social reform produces a false belief in the potential of change. There are few instances of meaningful reordering of social and economic arrangements and macro-redistribution**.** Scholars write about decoding what is really happening, as though the scholarly narrative has the power to unpack more than the actual conventional experience will admit.224 Unrelated efforts become related and part of a whole through mere reframing. At the same time, the **elephant in the room** — the rising level of economic inequality — is left unaddressed and comes to be understood as natural and inevitable.225 This is precisely the problematic process that critical theorists decry as losers’ self-mystification, through which marginalized groups come to see systemic losses as the product of their own actions and thereby begin to focus on minor achievements as representing the boundaries of their willed reality. The explorations of micro-instances of activism are often fundamentally performative, obscuring the distance between the descriptive and the prescriptive. The manifestations of extralegal activism — the law and organizing model; the proliferation of informal, soft norms and norm-generating actors; and the celebrated, separate nongovernmental sphere of action — all produce a fantasy that change can be brought about through small-scale, decentralized transformation. The emphasis is local, but the locality is described as a microcosm of the whole and the audience is national and global. In the context of the humanities, Professor Carol Greenhouse poses a comparable challenge to ethnographic studies from the 1990s, which utilized the genres of narrative and community studies, the latter including works on American cities and neighborhoods in trouble.226 The aspiration of these genres was that each individual story could translate into a “time of the nation” body of knowledge and motivation.227 In contemporary legal thought, a corresponding gap opens between the local scale and the larger, translocal one. **In reality**, although there has been a recent proliferation of associations and grassroots groups, few new local-state national federations have emerged in the United Statessince the 1960s and 1970s, and many of the existing voluntary federations that flourished in the mid-twentieth century are in decline.228 There is, therefore, an absence of links between the local and the national, an absent intermediate public sphere, which has been termed “the missing middle” by Professor Theda Skocpol.229 New social movements have for the most part failed in sustaining coalitions or producing significant institutional change through grassroots activism. Professor Handler concludes that this failure is due in part to the ideas of contingency, pluralism, and localism that are so embedded in current activism.230 Is the focus on small-scale dynamics simply an evasion of the need to engage in broader substantive debate? It is important for next-generation progressive legal scholars, while maintaining a critical legal consciousness, to recognize that not all extralegal associational life is transformative. We **must differentiate**, for example, between inward-looking groups, which tend to be self- regarding and depoliticized, and social movements that participate in political activities, engage the public debate, and aim to challenge and reform existing realities.231 We must differentiate between professional associations and more inclusive forms of institutions that act as trustees for larger segments of the community.232 As described above, extralegal activism tends to operate on a more divided and hence a smaller scale than earlier social movements, which had national reform agendas. Consequently, within critical discourse there is a need to recognize the limited capacity of small-scale action. We should question the narrative that imagines consciousness-raising as directly translating into action and action as directly translating into change**.** Certainly not every cultural description is political. Indeed, it is questionable whether forms of activism that are opposed to programmatic reconstruction of a social agenda should even be understood as social movements. In fact, when groups are situated in opposition to any form of institutionalized power, they may be simply mirroring what they are fighting against and merely producing moot activism that settles for what seems possible within the narrow space that is left in a rising convergence of ideologies. The original vision is consequently coopted, and contemporary discontent is legitimated through a process of self-mystification.

#### Rejoining antitrust is invaluable for bridging scholarship between debate and movements.

Rahman 20, American legal scholar, author, and policy advisor who currently serves as Senior Counselor in the Office of Information and Regulatory Affairs (OIRA) in the Biden administration (Sabel Rahman, September 2020, “Structuralist Regulation,” Prepared for NYU Law School Public Law Colloquium)

Introduction

In the summer of 2020, the murder of George Floyd by police officers in Minneapolis sparked a new wave of Black Lives Matter protests, escalating into what would become the largest protest movement of modern American history.1 The protests put at the forefront of reform debates long-standing demands to “defund the police” and calls for abolition of the prison industrial complex.2 While many policy commentators recoiled at the demand to defund the police, offering more modest and less disruptive alternatives to mitigate the problem of police violence,3 longtime advocates for abolition responded by asserting that the demand was in fact intended to be taken literally and seriously: that police departments and prisons should be defunded and abolished, and that those resources be reallocated to different institutions committed to securing public safety and well-being. The central insight, for abolitionists, is that the problem of police violence against Black residents is a structural problem, a product of the institutionalized biases, cultures, and profit motives embedded in policing as an institution. Given the structural roots of the problem, many well-intentioned reformist proposals for more transparency, stricter rules of police conduct, or other anti-bias measures would simply not succeed4 in reducing the incidence of violence against Black and brown Americans.5 A similar dynamic played out the same summer in a very different policy domain. In July, Congress convened a historic first: a hearing featuring a tough grilling of the CEOs of the big four tech companies, Apple, Google, Amazon, and Facebook.6 After years of increasing public scrutiny over the business practices of these firms and concerns about their market power, 7 policymakers are now for the first time in decades seriously entertaining questions about amped up antitrust enforcement and policy. But at the same time, some have raised cautionary notes, warning that greater antitrust efforts might be problematic, misleading, or ill-conceived.8 Even as concern over “fake news,” disinformation, and media polarization on online platforms like Facebook and YouTube proliferate,9 and as the COVID-19 pandemic accentuates the market dominance of these platform firms, 10 a similar clash is emerging among policymakers, between those seeking structural constraints on the platform business models of information platforms, and those who see such interventions as too draconian, preferring instead case-by-case management of conduct and content on these platforms.11 Or take one more example of this tension between structural and case-by-case regulation in the ongoing debates over the problem of financial malfeasance, too-big-to-fail financial firms, and the risk of financial crises. After the 2008 financial crisis, one set of policy responses has emphasized largely entity-by-entity and case-by-case responses: macroprudential regulation by federal officials overseeing the risk profiles and approaches of systemically risky financial firms, or greater corporate compliance mechanisms promoting “ethical” financial conduct.12 Another set of policy proposals are more structural, seeking to alter the very business models and market dynamics of finance more broadly, whether by converting financial firms into de facto public utilities13 or by breaking up systemically risky banks to prevent the risk of financial collapse in the first place.14 These debates, most prevalent a decade ago, have started to reemerge as the country enters another historic economic collapse, and commentators raise questions about how to structurally remake the financial sector in response. 15 This paper is not about abolition or antitrust or financial reform per se. But it is about an underlying conceptual and analytical debate that lies beneath each of these policy fights—and a wide range of other similar battles playing out in legal and policy circles. Whether it is in context of policing, tech, finance, or in other areas, we can see a similar pattern to the policy debate. Structuralist solutions are proposed in each of these debates, each time provoking a similar set of counterclaims and anxieties. Often, structuralist claims—like defunding the police, breaking up tech platforms, or the sharp restriction of too-big-to-fail banks—are seen as overly costly, dangerous, or simply naïve and ill-informed. Alternatives are proposed that seek to manage or mitigate the problematic conduct of firms or state actors; but these counter proposals are in turn critiqued for being too minimalist or incremental. The problem, however, is that for many policymakers the unease with structural solutions can be habitual and under-explained. When structuralist policies are offered, they are read in terms of a simple spectrum of “more” versus “less” regulation, with more regulation facing a higher burden of justification against default market and private orderings. The problem with this response is that, while structuralist proposals do have their limitations and risks, they are also often apt and well-tailored to the problems they seek to address. That value, however, is easily overlooked insofar as structuralist proposals are too-readily caricatured as naïve or overly costly. This paper attempts to fill this gap, providing a first cut at articulating and theorizing structuralist regulation as a distinct regulatory strategy.16 This paper is an attempt to theorize the concept of structuralist regulation, what makes it unique, what assumptions and under what conditions it should be preferred to more conventional solutions. While structuralist proposals like “breaking up the banks” are often criticized in the frame of being “too much” regulation in contrast to minimalist alternatives, as I will suggest in this paper, structuralist regulation is not necessarily “more”; but it is different, and those differences are sometimes warranted. The idea of structuralist regulation is related to but distinct from other familiar regulatory strategy distinctions: rules versus standards;17 adjudication versus rulemaking;18 command-and-control regulation versus decentralized and “new governance” models of regulation.19 In this paper, I define structuralist regulation as a regulatory approach that attempts to mitigate problematic conduct not through direct enforcement on individual actors, but rather by altering the background social, economic, political structures to prophylactically prevent or reduce the incentives for and likelihood of those incidents. Readers should note that I use the term “regulation” in this paper loosely to refer to various kinds of policymaking; as we shall see, structuralist policies can be effectuated through legislative or administrative means, often both. Structuralist regulation contrasts with more individualized, entity- or conduct-based regulations that depend on case-by-case enforcement, and instead focuses on limiting or altering the capacities and powers of those actors in the first place. Another way to understand structuralist policy is that it operates “upstream” of conventional policy debates: rather than attempting to manage particular instances of problematic conduct by firms or state actors, structuralist solutions preemptively seek to shape the powers and capacities of those actors as a way to prophylactically limit the likelihood of problematic conduct in the first place. Structuralist policy is not a sharp binary contrast with non-structural approaches. But it is a different, distinctive way of thinking about public policy and regulation, resting on different assumptions about the likelihood of harms, about administrative capacities, and also on different causal understandings of the problems it seeks to solve. Structuralist regulations may in some sense be costly: it is likely that some relatively benign conduct will also be swept up or eliminated in a structuralist regime. But these costs come with accompanying benefits: reduced costs of detection and enforcement for regulators; a better economizing of scarce regulatory capacity and autonomy; a precautionary limiting of potentially devastating outcomes; and a more direct addressing of problematic patterns that might otherwise defy remedial efforts. This conceptual clarification generates a number of useful payoffs. First, it offers a language and framework to understand structuralist regulation as a distinct way of thinking about public policy. This is critical to disentangle some of the fuzziness around policy debates in areas like finance, tech, and racial justice. It is also a necessary precondition to having more productive policy debates and opening up more room for research. As I will argue below, often there are good reasons to prefer some kind of structuralist regulation, but plenty of disagreement or lack of clarity on what specific structuralist tool to deploy. Should we break up Facebook via antitrust, or impose public utility / common carriage regulations on the platform, or both? These are arguably both structuralist tools, and there is a debate to be had between them. But that debate can be obscured by unease with structuralist approaches to begin with, making it harder to have an apples-to-apples comparison and analysis of what policy lever to deploy. Second, this concept of structuralist regulation helps provide a policy framework for understanding and engaging some of the structuralist claims made by grassroots reform movements especially in this moment. We are in a unique moment of resurgent grassroots activism, and as scholars of social movements have argued, many of these movements are advancing structural, transformative visions of public policy and legal-institutional change.20 But these claims are often seen as outside the scope of more traditional modes of policy debate and analysis. Building a conceptual framework of what we mean by ‘structural’ reform can help bridge the reform ideas being generated by grassroots movements on the one hand, and those arising from policymakers and academics on the other. More broadly, we might even say we are on the cusp of a revival of interest in structuralist policy solutions in response to the deeper problems of economic inequality,21 racial subordination,22 power in public law,23 and political economy approaches to law and public policy.24 A clearer understanding of structuralist policy design will be important to inform the kind of inclusionary policy agenda needed to remedy these inequities. The rest of the paper proceeds as follows. Part I provides a conceptualization of ‘structuralist’ policymaking, identifying the underlying assumptions that animate structuralism as a regulatory strategy. This Part also notes that this concept of regulatory strategy (or what I call “regulatory logic”, as defined below) should be understood as a distinct way of unpacking and analyzing the patterns of policymaking judgment distinct from other modes of analysis like cost-benefit analysis or the rules-versus-standards debate. Part II then looks at examples of structuralist policy proposals in recent economic policy debates: the debate over tech platforms, the debate over too-big-to-fail financial firms and systemic risk, and the renewed interest in anti-trust and anti-monopoly law. These examples help illustrate structuralist regulatory logics in action, and their distinctive assumptions and potential benefits over more conventional regulatory approaches. The purpose of this Part is not to offer a full-throated defense of structuralist policies in each of these sectors (although I am perhaps unsurprisingly sympathetic to the arguments on the merits); rather the purpose here is simply to illustrate structuralism as a distinct mode of thinking about policymaking. Part III articulates some broader implications for how to implement and institutionalize structuralist policies. Part IV concludes with some closing thoughts on how structuralism as a way of thinking about regulation connects to this broader moment of intense political and scholarly interest in inequality and racial (in)justice.

#### That’s true even if none of our ideas ever come to light.

Waller & Morse 20, \*John Paul Stevens Chair in Competition Law; Professor and Director, Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law \*\*J.D. Expected 2021, Loyola University Chicago School of Law (\*Spencer Weber Waller \*\*Jacob Morse, 7-26-2020, "The Political Face of Antitrust," Brooklyn Journal of Corporate, Financial, and Commercial Law, https://ssrn.com/abstract=3660946)

Antitrust has always been political in nature. Antitrust law provides broad legal commands dealing with how governments and private individuals can challenge different types of market behavior. In this way, antitrust has not changed. Antitrust will never take the place of sports, the Dow Jones index, or the weather for conversation at the breakfast table, but it has become a meaningful part of the political and policy debate for candidates, the legislature, and important segments of civil society. What has changed, however, is the degree that antitrust has reentered the political arena. Once mostly the domain of technocrats, antitrust issues have been proposed and debated by Presidential candidates, political parties, legislators, pundits, journalists, lobby groups, and voters alike. There are also a flurry of serious proposals and investigations that would make significant changes to the current system if adopted. This is all to the good. Even if none of the current proposals come to fruition, the antitrust debate is part of a broader engagement with political economy issues dealing with fundamental concerns such as economic concentration, globalization, income inequality, social and racial justice, and even recently the proper response to the COVID-19 emergency. The many proposals, initiatives, and pressure groups represent at a minimum the return of antitrust as part of the progressive agenda.

#### The aff’s anti-normativity is exactly what oppressive structures want---the university will assimilate the aff while finding new ways to discipline and exclude scholarship that meaningfully resists power structures.

Roderick A. Ferguson 12, He is professor of race and critical theory at the University of Minnesota, Twin Cities. He is author of Aberrations in Black: Toward a Queer of Color Critique (Minnesota, 2003) and coeditor, with Grace Hong, of Strange Affinities: The Gender and Sexual Politics of Comparative Racialization, *The Reorder of Things: The University and Its Pedagogies of Minority Difference*, pp. 11-14//KU-MS

In the context of the post–World War II United States, the American academy can be read as a record of the shifts and contradictions of political economy. Indeed, with the admission of women and people of color into predominantly white academic settings, the eco-nomic character of the American academy did not simply vanish. The academy would begin to put, keep in reserve, and save minoritized subjects and knowledges in an archival fashion, that is, by devising ways to make those subjects and knowledges respect power and its “laws.” Put differently, the ethnic and women’s studies movements applied pressures on the archival conventions of the academy in an effort to stretch those conventions so that previously excluded subjects might enjoy membership. But it also meant that those subjects would fall under new and revised laws. As a distinct archival economy, the American academy would help inform the archival agendas of state and capital—how best to institute new peoples, new knowledges, and cultures and at the same time discipline and exclude those subjects according to a new order.

This was the moment in which power would hone its own archival economy, producing formulas for the incorporation rather than the absolute repudiation of difference, all the while refining and perfecting its practices of exclusion and regulation. This is the time when power would restyle its archival propensities by dreaming up ways to affirm difference and keep it in hand. Ethnic studies and women’s studies movements were the proto ­ typical resources of incorporative and archival systems of power that reinvented themselves because of civil rights and liberation movements of the fifties, sixties, and seventies. Part of the signature achievements of these affirmative modes of power was to make the pursuit of recognition and legitimacy into formidable horizons of pleasure, insinuating themselves into radical politics, trying to convince insurgents that “your dreams are also mine.”

By excavating the social movements, we may be able to chart the emergence of this new kind of archival economy that transformed academic, political, economic, and social life from the late sixties and beyond. Moreover, focusing on the social movements and the denominations of interdisciplinary forms that emerged from them might allow us to produce a counterarchive detailing the ways in which power worked through the “recognition” of minoritized histories, cultures, and experiences and how power used that “recognition” to resecure its status. The histories of interdisciplinary engagements with forms of difference represent a conflicted and contradictory negotiation with this horizon of power. Seen this way, we must entrust the interdisciplines with a new charge, that of assessing power’s archival techniques and maneuvers. As Self-Portrait 2000 suggests, the involution of marginal differences and the development of the interdisciplines, broadly conceived, denoted the elaboration of power rather than the confirmation that our “liberty” had been secured. We must make it our business to critically deploy those modes of difference that have become part of power’s trick and devise ways to use them otherwise.

The influence that the student movements had on institutional life within the United States points to a need to assess the streams of the academy within political economy. If state and particularly capital needed the academy to reorient their sensibilities toward the affirmation of difference— that is, to complete the constitutional project of the United States and begin to resolve the contradictions of social exclusion—then it also meant that the academy became the laboratory for the revalorization of modes of difference.

This changing set of representations, the institutions that organized themselves around that set, and the modes of power that were compelled by and productive of those transformations are what we are calling the interdisciplines. The interdisciplines were an ensemble of institutions and techniques that offered positivities to populations and constituencies that had been denied institutional claims to agency. Hence, the interdisciplines connoted a new form of biopower organized around the affirmation, recognition, and legitimacy of minoritized life. To offset their possibility for future ruptures, power made legitimacy and recognition into grand enticements. In doing so, they would become power’s newest techniques for the taking of difference. What the students often offered as radical critiques of institutional belonging would be turned into various institutions’ confirmation.

#### Their discursive resistance is part and parcel with neoliberalism---critique without collective action provides a façade of resistance but leaves power structures unchallenged and drains energy for real political action.

Abraham Iqbal Khan 16, Assistant Professor of African American Studies at Pennsylvania State University, *A rant good for business: Communicative capitalism and the capture of anti-racist resistance*, Popular Communication, 14:1, 39-48, DOI: 10.1080/15405702.2015.1084629//KU-MS

The problem with neoliberalism is not that it asks us to be anti-racist as such, but that it demonizes collective action, occludes class consciousness, and forestalls the formation of plausible solidarities. The critical move that connects anti-racism to anti-capitalism is to account for the mechanisms that help anti-racism depoliticize the marketplace. Opposing neoliberalism requires attention to what Jodi Dean calls communicative capitalism, an enticement to play politics without doing it, to delight in political speech without the work involved in organizing and forming coalitions. As Dean (2009) puts it, communicative capitalism is defined by “the materialization of ideals of inclusion and participation in information, entertainment, and communication technologies in ways that capture resistance and intensify global capitalism” (p. 2). Marxist critics like Adolph Reed (2013) worry that the hunt for institutional racism works to “graft more complex social dynamics onto a simplistic and frequently psychologically inflected racism/anti-racism political ontology” (p. 12). Reed’s concern is that anti-racism centers oppositional politics around the wrong antagonism by promoting the racial diversification of capital. At the same time, anti-racist critics of neoliberalism notice the ways in which those very same complex social dynamics are deeply racialized. The idea of communicative capitalism resolves this impasse in oppositional politics by recognizing that legitimation and obfuscation are opposite sides of the same coin. By promising universal access and unfettered mobility, communication technologies deliver participation to previously excluded social groups and then register the fact of participation as politics itself. Anti-racist grievances are easily heard, but also quickly evaporate. Participation validates market wisdom and effaces the market’s racial effects.

This point addresses the gap between racism as it was diagnosed and racism as it was practiced in the aftermath of Sherman’s postgame rant. A handful of hateful tweets offered the sports media the opportunity to exhibit their anti-racist credentials in torrents of self-referential speech. The sheer amount of media attention paid to Sherman after his postgame interview was itself the subject of media attention, a kind of meta-attention expressed in the suggestion that Sherman had “broken the internet.” 1 Dean (2009) observes that on the internet, “media circulate and extend information about an issue or event, amplifying its affect and seemingly its significance. This amplification draws in more media, more commentary, and more opinion, more parody and comic relief, more attachment to communicative capitalism’s information and entertainment networks such that the knot of feedback and enjoyment itself operates as (and in place of) the political issue or event” (p. 32). Sports media illustrated this dynamic relative to the way audiences were invited to interpret Sherman’s rant. As Tommy Tomlinson (2014) admitted in Forbes, “raw emotion—whatever form it takes—is exactly what I hope for.” ThinkProgress’s Travis Waldron (2014) agreed that “it might be a little unfair to expect anything else than raw, honest emotion right after that game is finished.” Beyond simply circulating a burst of anti-racist indignation, this commentary distilled Sherman’s display into pure affect. Dean (2009) contends that communicative capitalism “reformats” political energy “to speaking and saying and exposing and explaining, a reduction key to a democracy conceived of in terms of discussion and deliberation” (p. 32). This kind of discourse produces the illusion that something political is going on, while “reinforcing the hold of neoliberalism’s technological infrastructure” (Dean, 2009, p. 32). This is not to say that racist epithets are undeserving of rebuttal, but that the disproportionate response performs neoliberalism’s injunction to reduce politics to “dialogue” and “awareness.”

#### Political pragmatism is good.

**Bryant 12**, Prof. of Philosophy @ Collins College and Chair of Critical Philosophy Program @ the New Centre for Research and Practice (Levi, “War Machines and Military Logistics: Some Cards on the Table,” <https://larvalsubjects.wordpress.com/2012/09/15/war-machines-and-military-logistics-some-cards-on-the-table/>)

We need answers to these questions to intervene effectively. We can call them questions of “military logistics”. We are, after all, constructing war machines to combat these intolerable conditions. Military logistics asks two questions: first, it asks what things the opposing force, the opposing war machine captured by the state apparatus, relies on in order to deploy its war machine: supply lines, communications networks, people willing to fight, propaganda or ideology, people believing in the cause, etc. Military logistics maps all of these things. Second, military logistics asks how to best deploy its own resources in fighting that state war machine. In what way should we deploy our war machine to defeat war machines like racism, sexism, capitalism, neoliberalism, etc? What are the things upon which these state based war machines are based, what are the privileged nodes within these state based war machines that allows them to function? These nodes are the things upon which we want our nomadic war machines to intervene. If we are to be effective in producing change we better know what the supply lines are so that we might make them our target. What I’ve heard in these discussions is a complete indifference to military logistics. It’s as if people like to wave their hands and say “this is horrible and unjust!” and believe that hand waving is a politically efficacious act. Yeah, you’re right, it is horrible but saying so doesn’t go very far and changing it. It’s also as if people are horrified when anyone discusses anything besides how horribly unjust everything is. Confronted with an analysis why the social functions in the horrible way, the next response is to say “you’re justifying that system and saying it’s a-okay!” This misses the point that the entire point is to map the “supply lines” of the opposing war machine so you can strategically intervene in them to destroy them and create alternative forms of life. You see, we already took for granted your analysis of how horrible things are. You’re preaching to the choir. We wanted to get to work determining how to change that and believed for that we needed good maps of the opposing state based war machine so we can decide how to intervene. We then look at your actual practices and see that your sole strategy seems to be ideological critique or debunking. Your idea seems to be that if you just prove that other people’s beliefs are incoherent, they’ll change and things will be different. But we’ve noticed a couple things about your strategy: 1) there have been a number of bang-on critiques of state based war machines, without things changing too much, and 2) we’ve noticed that we might even persuade others that labor under these ideologies that their position is incoherent, yet they still adhere to it as if the grounds of their ideology didn’t matter much. This leads us to suspect that there are other causal factors that undergird these social assemblages and cause them to endure is they do. We thought to ourselves, there are two reasons that an ideological critique can be successful and still fail to produce change: a) the problem can be one of “distribution”. The critique is right but fails to reach the people who need to hear it and even if they did receive the message they couldn’t receive it because it’s expressed in the foreign language of “academese” which they’ve never been substantially exposed to (academics seem to enjoy only speaking to other academics even as they say their aim is to change the world). Or b) there are other causal factors involved in why social worlds take the form they do that are not of the discursive,propositional, or semiotic order. My view is that it is a combination of both. I don’t deny that ideology is one component of why societies take the form they do and why people tolerate intolerable conditions. I merely deny that this is the only causal factor. I don’t reject your political aims, but merely wonder how to get there. Meanwhile, you guys behave like a war machine that believes it’s sufficient to drop pamphlets out of an airplane debunking the ideological reasons that persuade the opposing force’s soldiers to fight this war on behalf of the state apparatus, forgetting supply lines, that there are other soldiers behind them with guns to their back, that they have obligations to their fellows, that they have families to feed or debt to pay off, etc. When I point out these other things it’s not to reject your political aims, but to say that perhaps these are also good things to intervene in if we wish to change the world. In other words, I’m objecting to your tendency to use a hammer to solve all problems and to see all things as a nail (discursive problems), ignoring the role that material nonhuman entities play in the form that social assemblages take. This is the basic idea behind what I’ve called “terraism”. Terraism has three components: 1) “Cartography” or the mapping of assemblages to understand why they take the form they take and why they endure. This includes the mapping of both semiotic and material components of social assemblages. 2) “Deconstruction” Deconstruction is a practice. It includes both traditional modes of discursive deconstruction (Derridean deconstruction, post-structuralist feminist critique, Foucaultian genealogy, Cultural Marxist critique, etc), but also far more literal deconstruction in the sense of intervening in material or thingly orders upon which social assemblages are reliant. It is not simply beliefs, signs, and ideologies that cause oppressive social orders to endure or persist, but also material arrangements upon which people depend to live as they do. Part of changing a social order thus necessarily involves intervening in those material networks to undermine their ability to maintain their relations or feedback mechanisms that allow them to perpetuate certain dependencies for people. Finally, 3) there is “Terraformation”. Terraformation is the hardest thing of all, as it requires the activist to be something more than a critic, something more than someone who simply denounces how bad things are, someone more than someone who simply sneers, producing instead other material and semiotic arrangements rendering new forms of life and social relation possible. Terraformation consists in building alternative forms of life. None of this, however, is possible without good mapping of the terrain so as to know what to deconstruct and what resources are available for building new worlds. Sure, I care about ontology for political reasons because I believe this world sucks and is profoundly unjust. But rather than waving my hands and cursing because of how unjust and horrible it is so as to feel superior to all those about me who don’t agree, rather than playing the part of the beautiful soul who refuses to get his hands dirty, I think we need good maps so we can blow up the right bridges, power lines, and communications networks, and so we can engage in effective terraformation.

# 1NR

#### Mutual aid romanticizes charity, relies on capitalist values of rugged individualism and is easily coopted by the right.

Wuest, 2020 (Joanna – has the Fund for Reunion–Cotsen Postdoctoral Fellowship in LGBT Studies and is a lecturer at Princeton University, “Mutual Aid Can’t Do It Alone,” 16 Dec. 2020, https://www.thenation.com/article/society/mutual-aid-pandemic-covid/)

Since arriving on our shores this year, the Covid-19 pandemic has eroded Americans’ confidence in the ability of the government to perform its most basic functions. This loss of faith in the state has been accompanied by a renewed belief in the voluntary and reciprocal care of others, commonly referred to as mutual aid. Once relegated to pamphlets strewn about folding tables at a Food Not Bombs potluck, celebrations of mutual aid are now everywhere. Even the pages of The New York Times are [adorned](https://www.nytimes.com/2020/05/28/us/politics/michigan-coronavirus-help.html) with endorsements of its transformative political potential, the idea that society might be redesigned bottom-up by such practices of magnanimity. These displays of community care have indeed been vital throughout this time of bleeding. As the lockdowns have ravaged the American economy, existing inequalities have deepened. [Millions](https://www.thenation.com/article/society/covid-healthcare-unemployment/) of people have lost their employer-provided health insurance, and [tens of millions](https://www.theguardian.com/us-news/2020/nov/01/coronavirus-food-banks-pennsylvania) have experienced food insecurity as food banks and professional charity operations have been stretched beyond their capacity. In this grim context, the writer Rebecca Solnit has [applauded](https://www.theguardian.com/world/2020/may/14/mutual-aid-coronavirus-pandemic-rebecca-solnit) the “creative and generous altruism” and “brilliant grassroots organizing” of our times, as have many others. She celebrates the volunteers who provide meals and groceries to the elderly and the infirm, emergency aid to undocumented immigrants and sex workers, and free musical entertainment from apartment balconies. Others, like the anarchist attorney and law professor Dean Spade, have [encouraged](http://www.deanspade.net/tag/mutual-aid/) mutual aid work that is at once antagonistic and an alternative to welfare administrators who measure worthiness according to formal criteria before doling out assistance. Across the liberal-left expanse, mutual aid is on everyone’s lips and in every extended hand. But members of our crowd aren’t the only ones extolling the virtues of mutual aid. For decades now—and especially since the pandemic started—libertarians and conservatives from organizations like the [Heritage Foundation](https://www.heritage.org/civil-society/commentary/time-rekindle-the-tradition-mutual-support) and writers for [National Review](https://www.nationalreview.com/2020/09/case-for-private-education-co-operatives/) have commended care provided by those other than the state. Like their counterparts on the left, these groups have advanced an understanding of mutual aid not as a tactic alone but as a vision for remaking society. Though ideologically distinct, many on the left and the right now share a hope that mutual aid can overcome poverty and rigid class divisions through spontaneous, organic relationships rather than beginning from plans for serious structural reform. For instance, Brooklyn-based efforts have been [lauded](https://www.npr.org/sections/health-shots/2020/07/26/895115149/love-and-solidarity-amid-coronavirus-mutual-aid-groups-resurge-in-new-york-city) for the cross-class mingling among people like tech workers and out-of-work restaurant workers that has come to define care networks in gentrified neighborhoods. And while the characterization of mutual aid as solidarity, not charity, stands in stark contrast with the conservative faith in tax havens that masquerade as philanthropy, the two converge on critiques of the government’s capacity to provide for the many. It may sound churlish to be skeptical about this rekindled spirit of social generosity. But its anti-statist outlook ought to make mutual aid’s progressive advocates wary. After all, most on the left likely do not want to replace what remains of our welfare state with a gift economy, despite the romanticism attached to that more primitive condition of collaboration. Before we get too attached to mutual aid’s promise, it is worth looking back to the origins of its prominence in the United States, a time before voluntary associations were replaced by the care of the state. In his 1902 book Mutual Aid, Peter Kropotkin, a Russian aristocrat turned anarchist, challenged the reigning social Darwinism of his time. Eugenicists like Herbert Spencer and Francis Galton had cast all of earthly life as an endless battle among competitive individuals seeking their self-interest. Kropotkin counterposed those dour depictions of the survival of the fittest with a theory of human nature rooted in cooperation. Inspired by his observation of birds, beavers, and other “sociable animals” weathering the brutal Siberian tundra, Kropotkin saw all organic life as defined by a communal management of scarcity and reciprocal care. Though Kropotkin has been duly criticized for his naive view of human evolution—basically the inversion of the reductive accounts that it opposed—he did accurately observe that the late 19th century was rife with social organizations centered on collective care. This period also saw the first practices of mutual aid in the United States, predominantly taking the form of the fraternal society. By 1910, an estimated [one-third](https://www.heritage.org/political-process/report/mutual-aid-welfare-state-how-fraternal-societies-fought-poverty-and-taught) of the adult male population belonged to one of these membership-based networks. Friendly societies and local lodges afforded wage replacement for sick workers, care for orphans, assistance for the elderly, and burials. Others like the [Grange](https://ohiohistorycentral.org/w/Grange) assembled over 1.5 million farmers to purchase machinery that was owned collectively. As the Industrial Revolution kicked into full swing and the yeoman farmer and sharecropper alike were uprooted from agrarian life, the fledgling fraternal societies protected this new crop of wage laborers. Although some historians have portrayed the lodges as safe havens for white men alone—such organizations tended to be segregated by race and gender—the fraternal society was a sheer necessity rather than a site for rejuvenating a tattered rural masculinity. Notably, in the new urban landscapes, poor immigrants from Europe and Black sharecroppers from the South quickly formed benevolent associations of their own. Today conservatives often recall the mutual aid society with rosy nostalgia. They wax poetic about a supposedly preideological era, in which members endeavored to make capital and labor friends and eschewed state solutions to social ills. That view of the history, however, distorts just how intertwined the early trade union movement and mutual aid institutions could be. Some labor federations, like the Knights of Labor, formed lodge-style arrangements to generate solidarity among workers as they struggled against Gilded Age robber barons and agricultural monopolists. Later in the 20th century, groups like the International Workers Order emerged to provide health insurance and medical clinics to its nearly 200,000 members. Today labor unions like the United Electrical, Radio and Machine Workers of America carry on that tradition by instructing union stewards to funnel resources to out-of-work members. In this rendering, mutual aid was—and is—less about mere benevolence than it is about the ethos that an injury to one is an injury to all. Much like our present Covid care networks, mutual aid communities historically thrived during moments of crisis. Take the 1870s financial panics, in which a generation of workers lost their wages and savings. No longer willing to trust commercial institutions with their livelihoods, Americans turned to mutual savings banks and similar organizations that provided life insurance policies and other safeguards against sudden ruin. As a protracted depression followed the panics, many societies centralized their operations in order to serve a national membership base. By the advent of the 20th century, mutual aid had evolved from small kinship-style communities into a harbinger of the welfare state to come. Despite their best efforts, mutual aid societies were not enough to stave off the worst of these crises. Slowly, as veterans’ organizations, federations of women’s clubs, and labor unions put pressure on the federal and state governments, early social welfare policies, including mothers’ and veterans’ pensions and state-guaranteed workers’ compensation, began to overtake the friendly societies. By the time of the Wall Street crash of 1929, the inadequacy of mutual aid was becoming painfully apparent. In a rejection of small-scale efforts to tackle a colossus, the New Deal agenda of Franklin D. Roosevelt’s administration began an unprecedented expansion of social spending. In pairing pro-labor legislation like the National Labor Relations Act with social programs, the New Deal allowed unions to provide support for their members while shaping the state for progressive ends. Whereas in the past the American Federation of Labor turned its back on legislative reform for fear of undermining union power and accepting less than could be won at the bargaining table, the trade union movement began to play an essential role in constructing the welfare state. Labor advocates welcomed the relative inclusivity of New Deal reforms, happily ditching the old fraternal societies, which often raised dues rates on or barred entirely those employed in hazard-prone professions. By the start of FDR’s Second New Deal in 1935, the mutual aid society had been superseded by a new nexus of state and social institutions more capable, protective, and widespread than any voluntarist variant that came before it. If the New Deal rendered mutual aid obsolete, the welfare state’s subsequent fissuring and rollback have been largely responsible for the rebirth of the private-sphere social safety net. The tenuous nature of the New Deal coalition is partly to blame. Though federal social spending soon far eclipsed mutual aid coverage, Southern Democrats were successful in exempting massive numbers of Black and white agricultural workers from government largesse. Women were also excluded from programs like old age insurance, consigned instead to the far less generous benefits administered by states. The situation of labor changed drastically, too, in the immediate post–New Deal era. Whereas the 1930s had been hospitable to a two-front fight aimed at both bosses and the state, the anti-labor Taft-Hartley Act in 1947 and the dawn of McCarthyism deterred many trade unionists from pursuing further such battles. While labor was forced into a defensive crouch, the liberal stewards of the New Deal order increasingly abandoned pro-worker policies for market-friendly ones. Turning their attention from full employment and single-payer health care, John F. Kennedy and Lyndon B. Johnson spent the 1960s implementing monetary and trade policies that laid the groundwork for our current wage stagnation and tariff wars. This all set the stage for the New Left’s intense suspicions of the state—and a pivot to practices of community care. The Black Panther Party for Self-Defense was an exemplar of this tradition. Cofounders Huey P. Newton and Bobby Seale grounded the party’s work in nearly two dozen service-to-the-people survival programs, the corollary of a broader agenda to educate, organize, and foment revolutionary activity. As Newton recounted, such programs were meant to illuminate capitalism’s inability to fulfill the people’s daily needs. One of the most effective of these projects was the Free for Children breakfast program. Within a year of its launch in 1969, the Panthers had fed over 20,000 youths in 19 cities. The program was so successful that it was mimicked by California Governor Ronald Reagan, who expanded the state’s nutrition assistance programs to counter the Black Panthers’ influence. The Panthers’ free breakfast brigade is still remembered fondly; this year Representative Alexandria Ocasio-Cortez of New York [recalled](https://twitter.com/aoc/status/1313911581802102785?lang=en) its legacy, comparing her office’s Covid-19 relief outreach to the breakfast program. But admirers of the Panthers often overstate the impact of their undeniably noble work. Despite her claim that the Panthers pressured the federal government to authorize a free breakfast program in 1975, the Department of Agriculture’s Food and Nutrition Service rolled out the first of several pilot programs three years before the Panthers’. (It was made permanent in the year Ocasio-Cortez cited.) Since [1946](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5149064/), the department has been offering its free and reduced-price National School Lunch program, a replacement for a patchwork array of volunteer ventures. Still, much more important than debates over which came first are the issues of scale and routes toward systemic reform. While the Panthers fed an astounding number of children across an impressive geographic range, their 1969 record was dwarfed by the more than 500,000 kids the federal government served free and reduced-price breakfasts the following year. (The program [currently](https://www.ers.usda.gov/topics/food-nutrition-assistance/child-nutrition-programs/school-breakfast-program/) feeds 14 million children.) Compared with the suite of aid programs launched by the Great Society and the War on Poverty, the Panthers’ service-to-the-people projects were a drop in the bucket. But scale wasn’t their only goal. Unlike organizers of the March on Washington for Jobs and Freedom like A. Philip Randolph and Bayard Rustin—who conjoined labor, civil rights, and demands for a federal minimum wage and jobs program—the Panthers were interested in building dual power institutions that would one day compete with the state. As party member Lorenzo Kom’boa Ervin explained, their aim was to bypass the state by building “our communities into dual power communes, from which we can wage a protracted struggle with capitalism and its agents.” But as the Panthers’ influence waned, an increasing number of self-styled community leaders became integrated into a political and entrepreneurial elite that largely neglected policies that would materially benefit the working-class Black population. Some would even come to assist a revanchist capitalist class in pillaging the welfare state and breaking the back of labor. There is a striking parallel between these developments and the trajectory of 19th century ethnically organized mutual aid outfits and related small-business ventures, which just as often evolved into capitalist enterprises and municipal political machines as they did vehicles for reform. And while a handful of those groups paved the way for strong unions and welfare policies, Black power came onto the scene at a time when the American left was enervated and there were few similar opportunities for egalitarian influence. A left-wing politics of mutual aid and self-care gave way to accommodation and brokerage. By the late 20th century, liberals pushed for a more limited deployment of the state, inaugurating the practice of leasing out state functions to private entities like nonprofits. By the late 1970s, an all-out assault on labor and the welfare state began to roll back 20th-century workers’ wins. As the United States went into lockdown last spring, the country entered a pandemic-induced recession with scant social protections. Faced with a hollowed-out welfare state and inadequate relief from the federal government’s initial stimulus, Americans had no choice but to rely on the generosity of their neighbors, friends, and colleagues. Since March, people from weekend volunteers to full-time anarchists have done extraordinary things to distribute food staples and provide shelter for those who found themselves hungry and homeless. Still, given that nearly a quarter of American households with children are carrying rental debt and that a permanent exodus of the poor and working class from major urban hubs is underway, such efforts are confined mainly to the margins. Weathering the current crisis requires nurturing useful hope while avoiding palliative delusions. That means ditching our magical thinking about the sustainability of those mass mobilizations of goodwill that make the nightly news and pepper the pages of left-wing periodicals (both of which neglect the fact that charitable giving actually plummets during recessions). It also means recognizing that crises are excellent opportunities for revanchist right-wing forces to further raze state institutions and slam the lid on cries for justice. When labor-left movements were strong and could afford to go on the offense, the Great Depression created an opening for reform. If there is a lesson from mutual aid’s role in these past triumphs, it is that such community work was subordinated to the tasks of invigorating trade unions and pushing the state to enact universal programs. Kropotkin was not wrong about our natural inclination to cooperate. But how we organize and nurture that cooperative instinct is crucial. A crisis can bring us together to rebuild durable structures for the collective good. It can also exacerbate the dog-eat-dog mentality that neoliberalism has cultivated for decades. Our country is coming to resemble a long-sought libertarian fantasy, with only atomized acts of compassion for those left out. We would do well to guard against this despotic individualism—the natural condition of the social without the state—and to be sober about what spurred this renaissance of mutual aid and what it portends.