## OFF

### T---1NC

#### 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

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

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

#### 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

## CASE

### 1NC---Politics Accessible

#### The state is not monolithically in opposition to black women, instrumental reforms provide tactical gains

Hill-Collins 9 – Patricia Hills Collins is a distinguished University Professor of Sociology at the University of Maryland, College Park. (“Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment.” page 277-280 <https://uniteyouthdublin.files.wordpress.com/2015/01/black-feminist-though-by-patricia-hill-collins.pdf>)

Black churches and schools have aimed to prepare African-Americans for full participation in U.S. society when the laws were changed. African-American women have experienced considerable success not only in getting laws changed, but in stimulating government action to redress past wrongs. The Voting Rights Act of 1964, the Civil Rights Act of 1965, and other important federal, state, and local legislation have outlawed discrimination by race, sex, national origin, age, or disability status. This changed legal climate granted African-American women some protection from the widespread discrimination that we faced in the past. At the same time, class-action lawsuits against discriminatory housing, educational, and employment policies have resulted in tangible benefits for many Black women

The structural domain of power encompasses how social institutions are organized to reproduce Black women’s subordination over time. One characteristic feature of this domain is its emphasis on large-scale, interlocking social institutions. An impressive array of U.S. social institutions lies at the heart of the structural domain of power. Historically, in the United States, the policies and procedures of the U.S. legal system, labor markets, schools, the housing industry, banking, insurance, the news media, and other social institutions as interdependent entities have worked to disadvantage African-American women. For example, Black women’s long-standing exclusion from the best jobs, schools, health care, and housing illustrates the broad array of social policies designed to exclude Black women from full citizenship rights. These interlocking social institutions have relied on multiple forms of segregation—by race, class, and gender—to produce these unjust results. For AfricanAmerican women, racial segregation has been paramount. Racial segregation rested on the “separate but equal” doctrine established under the 1896 ruling of Plessy v. Ferguson where the Supreme Court upheld the constitutionality of segregation of groups. This ruling paved the way for a rhetoric of color-blindness (Crenshaw 1997). Under the “separate but equal” doctrine, Blacks and Whites as groups could be segregated as long as the law was color-blind in affording each group equal treatment. Despite the supposed formal equality promised by “separate but equal,” subsequent treatment certainly was separate, but it was anything but equal. As a result, policies and procedures with housing, education, industry, government, the media, and other major social institutions have worked together to exclude Black women from exercising full citizenship rights. Whether this social exclusion has taken the form of relegating Black women to inner-city neighborhoods poorly served by social services, to poorly funded and racially segregated public schools, or to a narrow cluster of jobs in the labor market, the intent was to exclude. Within the structural domain of power, empowerment cannot accrue to individuals and groups without transforming U.S. social institutions that foster this exclusion. Because this domain is large-scale, systemwide, and has operated over a long period of time via interconnected social institutions, segregation of this magnitude cannot be changed overnight. Structural forms of injustice that permeate the entire society yield only grudgingly to change. Since they do so in part when confronted with wide-scale social movements, wars, and revolutions that threaten the social order overall, African-American women’s rights have not been gained solely by gradual reformism. A civil war preceded the abolition of slavery when all efforts to negotiate a settlement failed. Southern states routinely ignored the citizenship rights of Blacks, and even when confronted with the 1954 Brown v. Board of Education Supreme Court decision that outlawed racial segregation, many dug in their heels and refused to uphold the law. Massive demonstrations, media exposure, and federal troops all were deployed to implement this fundamental policy change. The reemergence of White supremacist organizations in the 1990s, many of which recirculate troubling racist ideologies of prior eras, speaks to the deep-seated resentment attached to Black women, among others, working toward a more just U.S. society. Events such as these indicate how deeply woven into the very fabric of American society ideas about Black women’s subordination appear to be. In the United States, visible social protest of this magnitude, while often required to bring about change, remains more the exception than the rule. For U.S. Black women, social change has more often been gradual and reformist, punctuated by episodes of systemwide upheaval. Trying to change the policies and procedures themselves, typically through social reforms, constitutes an important cluster of strategies within the structural domain. Because the U.S. context contains a commitment to reformist change by changing the laws, Black women have used the legal system in their struggles for structural transformation. African-American women have aimed to challenge the laws that legitimate racial segregation. As Chapter 9’s discussion of Black women’s activism suggests, African-American women have used various strategies to get laws changed. Grassroots organizations, forming national advocacy organizations, and event-specific social protest such as boycotts and sit-ins have all been used, yet changing the laws and the terms of their implementation have formed the focus of change. Even the development of parallel social institutions such as Black churches and schools have aimed to prepare African-Americans for full participation in U.S. society when the laws were changed. African-American women have experienced considerable success not only in getting laws changed, but in stimulating government action to redress past wrongs. The Voting Rights Act of 1964, the Civil Rights Act of 1965, and other important federal, state, and local legislation have outlawed discrimination by race, sex, national origin, age, or disability status. This changed legal climate granted African-American women some protection from the widespread discrimination that we faced in the past. At the same time, class-action lawsuits against discriminatory housing, educational, and employment policies have resulted in tangible benefits for many Black women. While necessary, these legal victories may not be enough. Ironically, the same laws designed to protect African-American women from social exclusion have increasingly become used against Black women. In describing new models for equal treatment under the law, Black feminist legal scholar Kimberle Crenshaw argues that the rhetoric of color-blindness was not unseated by the 1954 Brown v. Board of Education ruling. Instead, the rhetoric of color-blindness was reformulated to refer to the equal treatment of individuals by not discriminating among them. Under this new rhetoric of color-blindness, equality meant treating all individuals the same, regardless of differences they brought with them due to the effects of past discrimination or even discrimination in other venues. “Having determined, then, that everyone was equal in the sense that everyone had a skin color,” observes Crenshaw, “symmetrical treatment was satisfied by a general rule that nobody’s skin color should be taken into account in governmental decision-making” (Crenshaw 1997, 284). Within this logic, the path to equality lies in ignoring race, gender, and other markers of historical discrimination that might account for any differences that individuals bring to schools and the workplace. As a new rule that maintains long-standing hierarchies of race, class, and gender while appearing to provide equal treatment, this rhetoric of color-blindness has had some noteworthy effects. For one, observes Black feminist legal scholar Patricia Williams (1995), it fosters a certain kind of race thinking among Whites: Because the legal system has now formally equalized individual access to housing, schooling, and jobs, any unequal group results, such as those that characterize gaps between Blacks and Whites, must somehow lie within the individuals themselves or their culture. When joined to its twin of gender neutrality, one claiming that no significant differences distinguish men from women, the rhetoric of color-blindness works to unseat one important strategy of Black women’s resistance within the structural domain. Black women who make claims of discrimination and who demand that policies and procedures may not be as fair as they seem can more easily be dismissed as complainers who want special, unearned favors. Moreover, within a rhetoric of color-blindness that defends the theme of no inherent differences among races, or of gender-neutrality that claims no differences among genders, it becomes difficult to talk of racial and gender differences that stem from discriminatory treatment. The assumption is that the U.S. matrix of domination now provides equal treatment because where it once overtly discriminated by race and gender, it now seemingly ignores them. Beliefs such as these thus allow Whites and men to support a host of punitive policies that reinscribe social heirarchies of race and gender. In her discussion of how racism now relies on encoded language Angela Davis identifies how this rhetoric of color-blindness can operate as a form of “camouflaged racism”: Because race is ostracized from some of the most impassioned political debates of this period, their racialized character becomes increasingly difficult to identify, especially by those who are unable—or do not want— to decipher the encoded language. This means that hidden racist arguments can be mobilized readily across racial boundaries and political alignments. Political positions once easily defined as conservative, liberal, and sometimes even radical therefore have a tendency to lose their dis tinctiveness in the face of the seductions of this camouflaged racism (Davis 1997, 264). Americans can talk of “street crime” and “welfare mothers,” all the while claiming that they are not discussing race at all. Despite the new challenges raised by the rhetoric of color-blindness and gender neutrality, it is important to remember that legal strategies have yielded and most probably will continue to produce victories for African-American women. Historically, much of Black women’s resistance to the policies and procedures of the structural domain of power occurred outside powerful social institutions. Currently, however, African-American women are more often included in these same social institutions that long excluded us. Increasing numbers of African-American women have gained access to higher education, now hold good jobs, and might be considered middle-class if not elite. These women often occupy positions of authority inside schools, corporations, and government agencies. Achieving these results required changing U.S. laws.

### 1NC---University K

#### 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.

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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.”

#### Their theorization of racism occurring on the psychic level depoliticizes resistance and shifts blame from institutions to individuals---the aff replaces genuine political organizing with neoliberal self-help and cultural competency training.

Robin D.G. Kelley 16, Gary B. Nash Professor of American History at UCLA, is author of Africa Speaks, America Answers: Modern Jazz in Revolutionary Times and Freedom Dreams: The Black Radical Imagination, March 7th, “Black Study, Black Struggle,” http://bostonreview.net/forum/robin-d-g-kelley-black-study-black-struggle//KU-MS

Coates implies that the person is the brain, and the brain just another organ to be crushed with the rest of the body’s parts. Earlier in the book, he makes the startling declaration that enslaved people “knew nothing but chains.” I do not deny the violence Coates so eloquently describes here, and I am sympathetic to his atheistic skepticism. But what sustained enslaved African people was a memory of freedom, dreams of seizing it, and conspiracies to enact it—fugitive planning, if you will. If we reduce the enslaved to mere fungible bodies, we cannot possibly understand how they created families, communities, sociality; how they fled and loved and worshiped and defended themselves; how they created the world’s first social democracy.

Trauma is real. But reading black experience through trauma can lead to thinking of ourselves as victims rather than agents.

Moreover, to identify anti-black violence as heritage may be true in a general sense, but it obscures the dialectic that produced and reproduced the violence of a regime dependent on black life for its profitability. It was, after all, the resisting black body that needed “correction.” Violence was used not only to break bodies but to discipline people who refused enslavement. And the impulse to resist is neither involuntary nor solitary. It is a choice made in community, made possible by community, and informed by memory, tradition, and witness. If Africans were entirely compliant and docile, there would have been no need for vast expenditures on corrections, security, and violence. Resistance is our heritage.

And resistance is our healing. Through collective struggle, we alter our circumstances; contain, escape, or possibly eviscerate the source of trauma; recover our bodies; reclaim and redeem our dead; and make ourselves whole. It is difficult to see this in a world where words such as trauma, PTSD, micro-aggression, and triggers have virtually replaced oppression, repression, and subjugation. Naomi Wallace, a brilliant playwright whose work explores trauma in the context of race, sexuality, class, war, and empire, muses:

Mainstream America is less threatened by the ‘trauma’ theory because it doesn’t place economic justice at its core and takes the focus out of the realm of justice and into psychology; out of the streets, communities, into the singular experience (even if experienced in common) of the individual.

Similarly, George Lipsitz observes that emphasizing “interiority,” personal pain, and feeling elevates “the cultivation of sympathy over the creation of social justice.” This is partly why demands for reparations to address historical and ongoing racism are so antithetical to modern liberalism.

Managing trauma does not require dismantling structural racism, which is why university administrators focus on avoiding triggers rather than implementing zero-tolerance policies for racism or sexual assault. Buildings will be renamed and safe spaces for people of color will be created out of a sliver of university real estate, but proposals to eliminate tuition and forgive student debt for the descendants of the dispossessed and the enslaved will be derided as absurd. This is also why diversity and cultural-competency training are the most popular strategies for addressing campus racism. As if racism were a manifestation of our “incompetent” handling of “difference.” If we cannot love the other, we can at least learn to hear, respect, understand, and “tolerate” her. Cultural competency also means reckoning with white privilege, coming to terms with unconscious bias and the myriad ways white folks benefit from current racial arrangements. Powerful as this might be, the solution to racism still is shifted to the realm of self-help and human resources, resting on self-improvement or the hiring of a consultant or trainer to help us reach our goal.

Cultural-competency training, greater diversity, and demands for multicultural curricula represent both a resistance to and manifestation of our current “postracial” moment. In Are We All Postracial Yet? (2015), David Theo Goldberg correctly sees postracialism as a neoliberal revision of multicultural discourse, whose proposed remedies to address racism would in fact resuscitate late-century multiculturalism. But why hold on to the policies and promises of multiculturalism and diversity, especially since they have done nothing to dislodge white supremacy? Indeed I want to suggest that the triumph of multiculturalism marked a defeat for a radical anti-racist vision. True, multiculturalism emerged in response to struggles waged by the Black Freedom movement and other oppressed groups in the 1960s and ’70s. But the programmatic adoption of diversity, inclusion, and multiculturalism vampirized the energy of a radical movement that began by demanding the complete transformation of the social order and the eradication of all forms of racial, gender, sexual, and class hierarchy.

The point of liberal multiculturalism was not to address the historical legacies of racism, dispossession, and injustice but rather to bring some people into the fold of a “society no longer seen as racially unjust.” What did it bring us? Black elected officials and black CEOs who helped manage the greatest transfer of wealth to the rich and oversee the continued erosion of the welfare state; the displacement, deportation, and deterioration of black and brown communities; mass incarceration; and planetary war. We talk about breaking glass ceilings in corporate America while building more jail cells for the rest. The triumph of liberal multiculturalism also meant a shift from a radical anti-capitalist critique to a politics of recognition. This means, for example, that we now embrace the right of same-sex couples to marry so long as they do not challenge the institution itself, which is still modeled upon the exchanging of property; likewise we accept the right of people of color, women, and queer people to serve in the military, killing and torturing around the world.

At the same time, contemporary calls for cultural competence and tolerance reflect neoliberal logic by emphasizing individual responsibility and suffering, shifting race from the public sphere to the psyche. The postracial, Goldberg writes, “renders individuals solely accountable for their own actions and expressions, not for their group’s.” Tolerance in its multicultural guise, as Wendy Brown taught us, is the liberal answer to managing difference but with no corresponding transformation in the conditions that, in the first place, marked certain bodies as suspicious, deviant, abject, or illegible. Tolerance, therefore, depoliticizes genuine struggles for justice and power:

Depoliticization involves construing inequality, subordination, marginalization, and social conflict, which all require political analysis and political solutions, as personal and individual, on the one hand, or as natural, religious, or cultural on the other. Tolerance works along both vectors of depoliticization—it personalizes and it naturalizes or culturalizes—and sometimes it intertwines them.

### 1NC---Antitrust Good

#### 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.

### 1NC---Clash

#### Clash is critical to black liberation, no matter the means – struggle is most effective when founded upon criticism and debate.

Griffin citing Kelley 16, \*PhD student in the Department of History at UCLA, \*\*Gary B. Nash Professor of American History at UCLA (Thabisile, Robin D.G., March 7th, “Black Study, Black Struggle,” *Boston Review*, http://bostonreview.net/forum/robin-d-g-kelley-black-study-black-struggle)

A decade on, what most resonates from my experiences in the A-APRP is the organization’s commitment to constant study and criticism. Our organizing was always fueled by our reading list and discussions, which were crucial to our understanding of systems of oppression and how we might dismantle them. Reading was central to the revolution: it was not an extension of bourgeois university labor, but a critical way of acquiring tools for effective action.

Collective and self-criticism were also paramount. The members of our work-study group ranged in age from eighteen to thirty, with folk from different classes, regions, and backgrounds. Needless to say, there was conflict. Meetings would end with efforts toward constructive criticism, both of self and of the collective. In the often-complicated organizing toward freedom, the conflict and contradictions proved to be perhaps the most generative. It was through these uncomfortable frictions that we came to understand the vital role of dialectics. Studying and discussing led to indispensible debates about how to conceptualize and create freedom.

I would suggest that dialectics is still how we need to seek answers, within and beyond the university. Although neoliberal logic would lead us to believe otherwise, there is no fundamental divide between scholars and “the street.” This belief is inaccurate and destructive; we both affect and are affected by each other. Many of us are from the streets and return there with each birthday and funeral, and many of us still call it home. The intellectual relationship between academics and non-academics serves as another type of integral exchange, and ushers in more of a critical dialectic. In the academy, the access students have to particular types of resources comes with the great responsibility of building on existing discourses in new and emancipatory ways—for all of humanity.

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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.

# 1NR

#### 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.

#### Legal strategies are a vital component in liberation for black women but actualization requires legal engagement---their method detracts

Regina Austin 89, Associate Professor of Law, University of Pennsylvania, ARTICLE: SAPPHIRE BOUND!, 1989 Wis. L. Rev. 539

Well, I think the time has come for us to get truly hysterical, to take on the role of "professional Sapphires" in a forthright way, to declare that we are serious about ourselves, and to capture some of the intellectual power and resources that are necessary to combat the systematic denigration of minority women. It is time for Sapphire to testify on her own behalf, in writing, complete with footnotes. 13¶ "To testify" means several different things in this context: to present the facts, to attest to their accuracy, and to profess a personal belief or conviction. The minority feminist legal scholar must be a witness in each of these senses. She must document the material legal existences of minority women. Her work should explore their concrete problems and needs, many of which are invisible even to minority lawyers because of gender and class differences. Moreover, a synthesis of the values, traditions, and codes that bind women of the same minority group to one another and that fuel their collective struggle is crucial to the enterprise. The intellectual product of the minority feminist scholar should incorporate in a formal fashion the ethical and moral consciousnesses of minority women, their aspirations, and their quest for liberation. Her partisanship and advocacy of a minority feminist jurisprudence should be frankly acknowledged and energetically defended. Because her scholarship is to be grounded in the material and ideological realities of minority women and in their cultural and political responses, its operative premises must necessarily be dynamic and primarily immanent; as the lives of minority women change, so too should the analysis.¶ Finally, the experiential is not to be abandoned by the minority female legal scholar. She must be guided by her life, instincts, sensibility [\*543] and politics. 14 The voice and vision reflected in her work should contain something of the essence of the culture that she has lived and learned; 15 imagine, if you can, writing a law review article embodying the spontaneity of jazz, the earthiness of the blues, or the vibrancy of salsa. 16¶ I have given some thought to the tenets that a black feminist or "womanish" 17 legal jurisprudence might pursue or embrace. Other approaches are imaginable, and I hope that this essay will encourage or provoke their articulation. "[M]isty humanism" and "simplistic assertions of a distinguishable . . . cultural and discursive practice" are not adequate. 18 Begging won't get it either: I am not sappy and do not care whether white men love me. I can think of nothing more debilitating than thinking ourselves dependent upon the good will and civility of those in a position to oppress us. While it is important to build coalitions with whites of both sexes and other people of color, black women will not prosper from them if we entirely muffle our indignation and negotiate as mere supplicants. Oh, no! We have paid our dues, done more than our share of the doing and the dying, and are entitled to prosper with everyone else.¶ We must write with an empowered and empowering voice. The chief sources of our theory should be black women's critiques of a society that is dominated by and structured to favor white men of wealth and power. We should also find inspiration in the modes of resistance black women mount, individually and collectively, on a daily basis in response to discrimination and exploitation. Our jurisprudence should [\*544] amplify the criticism and lend clarity and visibility to the positive transformative cultural parries that are overlooked unless close attention is given to the actual struggles of black women. In addition, our jurisprudence should create enough static to interfere with the transmission of the dominant ideology and jam the messages that reduce our indignation, limit our activism, misdirect our energies, and otherwise make us the (re)producers of our own subordination. By way of an alternative, a black feminist jurisprudence should preach the justness of the direct, participatory, grass-roots opposition black women undertake despite enormous material and structural constraints.¶ A thoroughly critical stance, high standards, and a sharp focus are absolutely essential to our scholarly mission. Whatever we do must be analytical and rigorously researched and reasoned, not to convince and please those who have the power to control our professional advancement, but to repay the debt we owe our grandmothers, mothers, and sisters whose invisibility and marginality we aim to ameliorate. Although critiques of the racism of white feminists and the sexism of male "race persons" are useful, 19 to my way of thinking they can be an abdication of the responsibility to shape an affirmative agenda that makes the lives of real black women the central focus. 20 Our scholarship must be accessible to an audience of black female law students, legal scholars, practitioners, and nonlegal activists. They are likely to be both sources of politically pragmatic criticism and programmatic grounding, and informants as to the authentic, spontaneous, imaginative counterhegemonic moves being made by black women fighting racial, sexual, and class oppression on the front lines of their everyday lives. As scholars, we in turn can aid their political mobilization with lucid analyses that offer broad and cogent perspectives of the structural constraints that produce their subordination and the material openings that must be exploited if further freedom is to be achieved. 21¶ It is imperative that our writing acknowledge and patently reflect that we are not the voices of a monolithic racial/sexual community that does not know class divisions or social and cultural diversity. This recognition should check the basically conservative impulse to rely on generalizations about racism and sexism that are the product of our own [\*545] experiences. 22 It should also make us vigilant about lapsing into outrageous themes which suggest that black people are united by biological essences that produce in all of us a refined instinctive sense of justice. 23 Our positions as "scholars" set us apart to some extent from the women about whom we write, and our work would be better if we acknowledged the distance and attempted to bridge it. For a start, we must accept that there is skepticism about both the law and intellectual pursuits 24 in our communities. It accordingly behooves us to eschew the role of self-annointed spokespersons for our race and sex and instead take our lead as teachers and scholars from the ongoing liberation politics of black women.¶ Moreover, we must be responsive to the attacks that are leveled against us as well-paid, relatively assimilated professionals. As we are validly critiqued, so should we critique. We are obliged, therefore, to look at the needs and problems of black women to determine the role black elites (male and female) have played in their creation or perpetuation. 25 Similarly, in seeking jurisprudential reference points in the wisdom of black women at the bottom of the status hierarchy, 26 we must reject the romanticization of their "difference." It is patronizing, tends to support our position as intermediaries, and ignores the role that state-tolerated violence, material deprivation, and the dominant ideology play in minority cultural production. We must not be deterred from maintaining a critical stance from which to assess what black women might do to improve their political and economic positions and to strengthen their ideological defenses. At the same time, however, we must scrupulously avoid the insensitive disparagement of black women that ignores the positive, hopeful, and life-affirming characteristics of their actual struggles, and thereby overlooks the basis for more overt political activity.¶ Our contributions will not be divisive to the cause of the liberation of minority peoples and women if our scholarship is based on the concrete, material conditions of black women. Anti-racist or anti-sexist scholarship that is overinclusive and abstract is dangerous because it [\*546] misconceives the often knotty structural nature of the conditions that are its subject. In addition, such scholarship frequently reflects the assumption that oppressed groups are pitted against one another in a competition for scarce attention and resources, with the victory going to the most downtrodden. (I call this phenomenon "the running of the oppression sweepstakes.") For example, the much-touted concept of the "feminization of poverty" would be fine if it did not obscure the reality that poverty varies with race, has a class dimension, and in many minority communities afflicts both sexes. 27 Black women in particular have much to gain from efforts to understand the complexity of the interaction of race, sex (including sexual orientation), and class factors in the creation of social problems. 28¶ The mechanics of undertaking a research project based on the concrete material and legal problems of black women are daunting. The research is hard to do, but I believe it can be done. I have twice embarked on such projects. My first effort concerned industrial insurance, the rip-off life insurance with the small face amounts that my mother and grandmother purchased. 29 I was stymied because of a lack of information going beyond my own experience regarding the motivations that prompt poor black people to spend so much for essentially burial protection. I have more nexus with, respect for, and intellectual curiosity about the cultures of poor black people than to mount a scholarly project on the assumption that the women in my family are typical of the whole. The second project grew out of my interest in the causes of excess death in minority communities or what is the unacknowledged genocide of the poor black, brown, and red peoples of America. 30 I [\*547] decided to start with the problem of infant mortality. The infant mortality rate for blacks was 18.2 per 1,000 live births in 1985 as compared with 9.3 per 1,000 live births for whites. 31 I thought that I would begin by examining the extent to which the vilification of the cultural modes and mores of low-income minority females affects the prenatal care they receive. The inquiry would then extend to the role the law might play in curbing the mistreatment or non-treatment of pregnant women of color. I have not entirely abandoned this one.¶ The problems these projects involve are difficult because they do not begin with a case and will not necessarily end with a new rule. The world with which many legal scholars deal is that found within the four corners of judicial opinions. If the decisions and the rubrics they apply pay no attention to race, sex, and class (and the insurance and malpractice cases generally do not), then the material conditions of minority females are nowhere to be found, and the legal aspects of the difficulties these conditions cause are nearly impossible to address as a matter of scholarly inquiry. It is thus imperative that we find a way to portray, almost construct for a legal audience, the contemporary reality of the disparate groups of minority women about whom we write. We really cannot do this without undertaking field research or adopting an interdisciplinary approach, relying on the empirical and ethnographic research of others. The latter route is the one that I have taken in this Article and elsewhere. 32¶ Interdisciplinary research provides additional benefits. It gets one out of the law school and among scholars who are supportive and receptive to modes of analysis that are not Eurocentric or patriarchal. I have found that academics from other parts of the university where I [\*548] teach supply the intellectual community, stimulation, and encouragement that are essential to doing research. Furthermore, black scholars from other disciplines have provided me with useful strategies for dealing with the hostility my intellectual agenda might evoke. ¶ Looking at legal problems against the context of non-legal perspectives has its dangers. The legal scholar's obligation to take the law seriously generally requires that her writing be legalistic -- that she show the inadequacy of the existing rules, and either propose clever manipulations of the doctrine that overcome the weaknesses exposed by her critique or draft model legislation. This approach tends to collapse the inquiries into what black people need and want, and what they are likely to get, into one. The conservatism that is an inherent part of traditional doctrinal legal analysis can be a stifling handicap for the black female researcher. Speculation concerning proposals that are not rule-bound and lawyer-controlled (like, for example, strategies by which poor women might increase their power to shape the gynecological services provided by health care facilities ostensibly serving them) 33 seems beyond the pale. That is utopian politics, not law or legal scholarship. Of course, black people get almost nowhere in terms of gaining and enforcing legal entitlements without also exercising their political clout or scaring white people. (Truly powerless people do not "get" rights on account of their helplessness, and the rights they do "get" are protected only so long as they are backed up by the threat of disruption.) Thus, the black feminist legal scholar must be able to think political and talk legal if need be. Her pedagogical mission should extend to educating black women about the political significance of their ordinary lives and struggles. She must translate their frustrations and aspirations into a language that both reveals their liberatory potential and supports the legal legitimacy of their activism and their demands. ¶ [\*549] The remedies we contemplate must go beyond intangibles. We must consider employing the law to create and sustain institutions and organizations that will belong to black women long after any movement has become quiescent and any agitation has died. Full utilization of the economic, political, and social resources that black women represent cannot depend on the demand of a society insincerely committed to an ethic of integration and equal opportunity.¶ Implementation of an agenda for black feminist legal scholarship and expanded study of the legal status of minority women in general will require the right sort of environmental conditions, such as receptive or at least tolerant non-minority publishers and a network of established academics engaged in similar pursuits. We minority female scholars must devote a bit of our sass to touting the importance of the perspective of minority women and the significance of their concerns to any list of acceptable law review topics. If anyone asks you to talk or write about anything related to your race or your sex, turn the opportunity into one for exploring the legal concerns of women of color.

#### Institutions as a starting point is especially important in the context of racial politics

Themba-Nixon 2k

(Makani Themba-Nixon, “Changing the Rules: What Public Policy Means for Organizing,” Colorlines. Oakland: Jul 31, 2000. Vol. 3, Iss. 2; pg. 12)

The flourish and passion with which she made the distinction said everything. Policy is for wonks, sell-out politicians, and ivory-tower eggheads. Organizing is what real, grassroots people do. Common as it may be, this distinction doesn't bear out in the real world. Policy is more than law. It is any written agreement (formal or informal) that specifies how an institution, governing body, or community will address shared problems or attain shared goals. It spells out the terms and the consequences of these agreements and is the codification of the body's values-as represented by those present in the policymaking process. Given who's usually present, most policies reflect the political agenda of powerful elites. Yet, policy can be a force for change-especially when we bring our base and community organizing into the process. In essence, policies are the codification of power relationships and resource allocation. Policies are the rules of the world we live in. Changing the world means changing the rules. So, if organizing is about changing the rules and building power, how can organizing be separated from policies? Can we really speak truth to power, fight the right, stop corporate abuses, or win racial justice without contesting the rules and the rulers, the policies and the policymakers? The answer is no-and double no for people of color. Today, racism subtly dominates nearly every aspect of policymaking. From ballot propositions to city funding priorities, policy is increasingly about the control, de-funding, and disfranchisement of communities of color. What Do We Stand For? Take the public conversation about welfare reform, for example. Most of us know it isn't really about putting people to work. The right's message was framed around racial stereotypes of lazy, cheating "welfare queens" whose poverty was "cultural." But the new welfare policy was about moving billions of dollars in individual cash payments and direct services from welfare recipients to other, more powerful, social actors. Many of us were too busy to tune into the welfare policy drama in Washington, only to find it washed up right on our doorsteps. Our members are suffering from workfare policies, new regulations, and cutoffs. Families who were barely getting by under the old rules are being pushed over the edge by the new policies. Policy doesn't get more relevant than this. And so we got involved in policy-as defense. Yet we have to do more than block their punches. We have to start the fight with initiatives of our own. Those who do are finding offense a bit more fun than defense alone. Living wage ordinances, youth development initiatives, even gun control and alcohol and tobacco policies are finding their way onto the public agenda, thanks to focused community organizing that leverages power for community-driven initiatives. - Over 600 local policies have been passed to regulate the tobacco industry. Local coalitions have taken the lead by writing ordinances that address local problems and organizing broad support for them. - Nearly 100 gun control and violence prevention policies have been enacted since 1991. - Milwaukee, Boston, and Oakland are among the cities that have passed living wage ordinances: local laws that guarantee higher than minimum wages for workers, usually set as the minimum needed to keep a family of four above poverty. These are just a few of the examples that demonstrate how organizing for local policy advocacy has made inroads in areas where positive national policy had been stalled by conservatives. Increasingly, the local policy arena is where the action is and where activists are finding success. Of course, corporate interests-which are usually the target of these policies-are gearing up in defense. Tactics include front groups, economic pressure, and the tried and true: cold, hard cash. Despite these barriers, grassroots organizing can be very effective at the smaller scale of local politics. At the local level, we have greater access to elected officials and officials have a greater reliance on their constituents for reelection. For example, getting 400 people to show up at city hall in just about any city in the U.S. is quite impressive. On the other hand, 400 people at the state house or the Congress would have a less significant impact. Add to that the fact that all 400 people at city hall are usually constituents, and the impact is even greater. Recent trends in government underscore the importance of local policy. Congress has enacted a series of measures devolving significant power to state and local government. Welfare, health care, and the regulation of food and drinking water safety are among the areas where states and localities now have greater rule. Devolution has some negative consequences to be sure. History has taught us that, for social services and civil rights in particular, the lack of clear federal standards and mechanisms for accountability lead to uneven enforcement and even discriminatory implementation of policies. Still, there are real opportunities for advancing progressive initiatives in this more localized environment. Greater local control can mean greater community power to shape and implement important social policies that were heretofore out of reach. To do so will require careful attention to the mechanics of local policymaking and a clear blueprint of what we stand for. Getting It in Writing Much of the work of framing what we stand for takes place in the shaping of demands. By getting into the policy arena in a proactive manner, we can take our demands to the next level. Our demands can become law, with real consequences if the agreement is broken. After all the organizing, press work, and effort, a group should leave a decisionmaker with more than a handshake and his or her word. Of course, this work requires a certain amount of interaction with "the suits," as well as struggles with the bureaucracy, the technical language, and the all-too-common resistance by decisionmakers. Still, if it's worth demanding, it's worth having in writing-whether as law, regulation, or internal policy. From ballot initiatives on rent control to laws requiring worker protections, organizers are leveraging their power into written policies that are making a real difference in their communities. Of course, policy work is just one tool in our organizing arsenal, but it is a tool we simply can't afford to ignore.