## OFF

### 1NC – T – Nationalize

First off

#### In the first half, “On” indicates the object of an action

Brown 18 (BROWN, Judge. Opinion in State ex rel. Montgomery v. Brain, 422 P. 3d 1065 - Ariz: Court of Appeals, 1st Div. 2018. Google scholar caselaw, date accessed 8/26/21)

¶ 13 The State asserts that if "on another person" were to modify the first clause of A.R.S. § 13-105(13), then no crime could be charged as a dangerous offense absent "direct contact with another person." But the State construes the word "on" too narrowly, as it can function to identify a variety of situations. See, e.g., Webster's Ninth New Collegiate Dictionary 823-24 (1988) (giving the following definitions of "on": (1) "used... to indicate position in close proximity with ... "; (2) "used ... to indicate the object of collision, opposition, or hostile action ... "; and (3) "used ... to indicate destination or the focus of some action, movement, or directed effort "). These varied definitions also defeat the State's arguments that "[o]ne does not discharge nor threateningly exhibit a dangerous instrument `on' a person" and that "a dangerous instrument would be discharged at another person or threateningly exhibited to another person." Given the broad meaning of "on," there is no grammatical inconsistency in the language the legislature used to define a dangerous offense.

#### The plan violates—it is a prohibition *on* business practices NOT on anticompetitive business practices.

#### Extra T is a voter

#### A---jurisdiction---extra-topicality is beyond the judge’s scope, and proves the resolution insufficient

#### B---solvency boosters---extra-T steals a core neg argument: that increased competition can’t solve the problems of industry. Debate’s a game of inches, and letting the aff fiat the end to an industry stacks the deck for the aff.

#### In the second half, “Expand” requires an increase or extension of the same use for core antitrust laws

Turpen and Agosta 86 (MICHAEL C. TURPEN, ATTORNEY GENERAL OF OKLAHOMA. SUSAN B. AGOSTA, ASSISTANT ATTORNEY GENERAL CHIEF, LEGAL SERVICES. “Opinion No. 85-122” Court:Attorney General of Oklahoma — Opinion, Date published: Feb 27, 1986, <https://casetext.com/case/opinion-no-16187> , date accessed 7/12/21)

"Expand" is defined as "to increase the range, scope, volume, size, etc., of. . . ." New Comprehensive International Dictionary of the English Language (Funk Wagnall, 1982 ed., p. 446). A review of court cases from other jurisdiction offers additional guidance on the meaning of "expand." "Expand" means "an extension of a use or an increase in intensity of the same use." People v. Triem Steel Processing, 125 N.E.2d 678, 679 (Ill.App. 1955). The Illinois Supreme Court has said "expand means to extend, to enlarge." Federal Electric Co. v. Zoning Board of Appeals, 75 N.E.2d 359 (Ill. 1947).

#### The “core” antitrust laws are the Sherman, Clayton, and FTC Act—from the topic paper

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.

#### The plan violates—antitrust laws were created as an alternative to socialized nationalization AND the plan sweeps antitrust laws out of existence for pharma

Dewey 64 (Donald Dewey-Associate Professor of Economics, Columbia University. “THE ECONOMIC THEORY OF ANTITRUST: SCIENCE OR RELIGION?” , Virginia Law Review , Apr., 1964, Vol. 50, No. 3 (Apr., 1964), pp. 413-434, accessed online via KU libraries, date accessed 10/3/21)

Nevertheless, even if we were able to explain the causes and timing of the corporate revolution, we would still be left with an important and unanswered question. Why did the reaction against laissez faire in the United States produce antitrust while in most European countries it produced strong socialist movements? I think it no accident that following World War II the decline of the socialist tradition in the richer countries of western Europe has been accompanied by a rise of interest in antitrust. If "the commanding heights of industry" are soon to be nationalized and operated as state-owned monopolies, there is no point in worrying about the minor defects of a legal framework that is shortly to be swept away. But if nationalization and state monopoly is not the answer, then the revision of the existing legal framework can be a matter of importance. The reader will be spared another explanation of "why there is no socialism in America." For our purposes, the important aspect of the corporate revolution is the manner in which observers, especially judges, theorized about it after it was largely over. The principal fruit of their reflection was the distinction between "natural" and "unnatural" growth in the corpora- tion. Corporate growth was natural provided that it was not the result of wholesale mergers nor gained by the use of business practices that were unfair. Such tactics could be either ma/a in se (commercial bribery) or objectionable because they were the instrument of a sort of economic terror that discouraged competent rivals from offering competition.

#### Vote neg:

#### Ground—nationalization steals counterplans that eliminate the industry and remove disads based in antitrust like tradeoff.

#### Limits—they lead to a flood of new nationalization affs which stretches the neg too thin

### 1NC – K – Stanley

#### Trans/queer people live at the site of near life – violence renders them as nothingness, solidified by inclusion and state reforms.

Stanley 21, Eric A. Stanley is an associate professor in the Department of Gender and Women’s Studies at the University of California, Berkeley. They are also affiliated with the Program in Critical Theory and the Haas LGBTQ Citizenship Research Cluster (Eric, “1. Near Life: Overkill and Ontological Capture” in *Atmospheres of Violence: Structuring Antagonism and the Trans/Queer Ungovernable*, Duke University Press)

Affective Remains

Scotty Joe Weaver’s body, bound in gasoline-soaked fibers, charred and pummeled, as remainder of a trans/queer life, represents what kind of sociality is unlived before such a death. Among the tactics of resistance against the wrath of modernity is our collective attempt to articulate these various forms of vitality that congeal below or against the idea of the human. Such critical theorization, which also live in flesh, collect the spectral figures that remain as modernity’s twin. This is perhaps another way of saying that solidarity with Scotty Joe and all those no longer here demands that we work to destroy the conditions of their destruction. This is why we must understand the architecture of violence—its deployment of the human and the human’s negativity—so as to not reproduce, as response, harm’s continuation.41

The liberal articulations of this para-vitality, popularized by the Italian philosopher Giorgio Agamben as bare life, references a stripped-down sociality—a liminality at the cusp of death where one is transposed from human into thing/animal. The temporality of this equation follows the idea that abjection works, in the first instance, through dehumanizing those presumed to be already human. Such a line of thought also announces, via reconciliation, the possibility of return to enfranchisement. In other words, Enlightenment’s teleology is restored through legal augmentation. Yet what I’ve been sketching here, however incomplete, is a form of near life where the “feeling of nonexistence” comes before the question of life might be posed. Near life is a kind of ontocorporal (non)sociality that necessarily throws into crisis the categorical distinction between life/death. This might better comprehend not only the incomprehensible murders of those I’ve recounted but also the precarity of trans/queer survival in the wake of formal LGBT equality.42

Struggling to articulate the phenomenological and psychical limits of Blackness under colonization, Fanon opens up critical ground for understanding a similar calculation of life that is forced to exist as nonexistence. In Black Skin, White Masks, Fanon lays out how recognition (which is also the question of subjectivity) resides between structuring violence and instances of personal attacks. Central to the Western philosophical tradition, which is to say colonial modernity’s epistemology, is G. W. H. Hegel’s conception of the master/slave (lordship/bondage) dialectic, as it remains one of the most persistent schemes for understanding the encounter that produces self-consciousness. In, but not of, that same intellectual tradition, Fanon clarified how the Hegelian dialectic was an instrument for thinking white recognition and the Enlightenment universalism of its pretext. Under the condition of colonization and its racialized mandates, the dialectic would need to be reconsidered or perhaps totally abandoned. Hegel, for Fanon, positions the terms of the dialectic (master/slave) outside of history and thus he refuses to account for the historicity of colonial domination as central to the question of being. In other words, when the encounter is staged and the drama of negation unfolds, Hegel assumes a pure battle external to the context of arrival. Moreover, by understanding the dialectic singularly through the question of self-consciousness, Hegel, for Fanon, misrecognizes the battle as always and only for recognition.43

Informed by Alexandre Kojève and Jean-Paul Sartre’s rereading, Fanon makes visible the absent figure of the human assumed as the imminent subject of Hegel’s formulation. For Fanon, the structure of colonization that he survived under was not a system of recognition but a state of total war. The dialect cannot in the instance of colonization swing forward and offer the self-consciousness of its promise. According to Fanon, “For Hegel there is reciprocity; here the master laughs at the consciousness of the slave. What he wants from the slave is not recognition but work.”44 Hegel’s dialectic that, through labor, offers the possibility of self-consciousness, for the colonized is frozen in a state of domination and nonreciprocity. The promise of recognition that is dependent on this exchange is suspended in the upside-down world of occupation where the colonized remain, through the epidermalization of their position, as the necessary state of objecthood.45

What is at stake for Fanon, which is also why this articulation is helpful for thinking near life, is not only the bodily terror of force; the fantasy of ontological sovereignty also falls into peril under foundational violence. This state of total war, not unlike the attacks that left Rashawn Brazell, Lauryn Paige Fuller, and Scotty Joe Weaver dead, is at once from without the everyday cultural, legal, and economic practices, and at the same time from within by a consciousness that has been occupied by domination itself. For Fanon, the white imago holds captive the ontology of the colonized. The self/Other apparatus is dismantled, thus leaving the colonized as an “object in the midst of other objects”46 embodied as a “feeling of nonexistence.”47

While thinking alongside Fanon, how might we comprehend a phenomenology of racialized anti-trans/queer violence expressed as “nonexistence”? It is not that we can take the specific structuring of Blackness and/or Arabness in the French colonies and assume it would function the same today under U.S. settler colonial regimes of anti-trans/queer violence. However, if both desire and violence are imbricated by colonization and their itinerant afterlives, then such a reading might help make more capacious our understanding of anti-trans/queer violence today, as well as afford a rereading of sexuality and gender nonnormativity in Fanon’s texts. His prophetic intervention offers a space of perpetual nonexistence, neither master nor slave, written through the vicious work of epistemic force imprisoned in the cold cell of ontological capture. Here, nonexistence, or near life, forged in the territory of inescapable brutality, demands we only know these murders against the logics of aberration.

Violence, here, returns as irreducible antagonism, which crystallizes the ontocorporal, discursive, and material inscriptions that render specific bodies in specific times as the place of the nothing. The figuration of near life should not be understood as the antihuman but as that which emerges in the place of the question of humanity. In other words, this is not simply an oppositional category equally embodied by anyone or anything. This line of limitless inhabitation, phantasmically understood outside the intersections of power, often articulated as equality, leads us back toward rights discourse that seeks to further extend (momentarily) the badge of personhood. The nothing, or those made to live a “damaged life”48 as Theodor Adorno might have it, is a break whose structure is produced by, and not remedied through, legal intervention or state mobilizations. This also highlights how an analysis of devaluation and/or exclusion, the terms mostly closely associated with domination, misses how those forced to be included and their valuation properly names the forms of modern power we must confront.

#### Their investment in legalism is only an attempt to crowd out trans/queer voices – it cements the status quo of trans/queer violence.

Spade and Rohlfs 16, \*Spade is an associate professor at the University of Seattle School of Law \*\*Rohlfs is an assistant professor at San Francisco State University in the Department of Biology (Dean and Rori, “Legal Equality, Gay Numbers, and the (After?)Math of Eugenics”, S&F Online, https://sfonline.barnard.edu/navigating-neoliberalism-in-the-academy-nonprofits-and-beyond/dean-spade-rori-rohlfs-legal-equality-gay-numbers-and-the-aftermath-of-eugenics/)

Critiques of Legal Equality Approaches

Many scholars and activists have critiqued legal equality–centered responses to homophobia and transphobia, raising concerns about the political formations producing demands for legal reforms, as well as the reforms themselves. Legal equality framings often operate to pacify, neutralize, and redirect movements seeking transformative change, shifting demands for significant redistribution and restructuring into narrow demands for symbolic inclusion and state declarations of equality that do not alter material conditions of harm and violence. Legal reform often transforms only enough to stabilize and preserve the status quo, containing the threat of change represented by disruptive social movements and alternative ways of life by very slightly altering legal regimes but preserving harmful outcomes.[8] The concept of “discrimination” as it is framed by US legal equality regimes dehistoricizes and individualizes the harms of systems like white supremacy, settler colonialism, and heteropatriarchy by framing them as issues of individual prejudice and isolated bad acts. Such a framing makes it impossible to properly describe or remedy the harms of these systems, narrowing the scope of concern so severely that most conditions of harm and violence are not addressed. Because of the limits of legal framings, legal equality projects rarely meet the redistributive goals of populations in whose names they are created, and they can actually serve to obscure structural conditions of disparity.[9]

In the context of a growing racialized and gendered wealth divide in the US and globally, the expansion of criminalization and immigration enforcement systems and the “War on Terror,” critics charge that the cry for formal legal equality that has become synonymous with “LGBT rights” has produced victories that are little more than window dressing for racialized–gendered systems of violence and maldistribution that continue to shorten the lives of people impacted by homophobia and transphobia.[10] The dismantling of welfare programs, the expansion of criminal punishment systems, the criminalization of social movement work that demands transformative change, and the expansion of non-profitization have effectively shifted the political terrain such that the range of legible political demands only extends to those reforms that slightly tinker with and ultimately strengthen projects of militarism, criminalization, and deregulation of labor, environment, and capital.[11]

In this legal equality-centered politics, resistance to conditions of homophobia and transphobia has been narrowed in the last decades to an agenda that primarily seeks inclusion in systems and institutions that left movements have long identified as centers of state violence. Critiques of the ongoing criminalization of queer and trans life[12] are mostly ignored, crowded out by demands for increased criminal punishment in the form of hate crimes statutes, despite the lack of evidence that such laws prevent homophobic and transphobic violence.[13] Longstanding feminist, anti-racist and anti-colonial critiques of marriage have been silenced by a loudly articulated request for entrance into the institution of marriage with all its duties and privileges.[14] Critiques of the US military’s relentless violence, including its heteropatriarchal violence, are drowned out by celebration of the “right to serve” for “gay and lesbian Americans.”[15] In the context of this equal rights politics, the legible demands have become centered on removing formal barriers to entrance to the key institutions that organize US life and sustain its colonial, racial, and gendered violence. Critics have raised concerns not only about how this legal equality agenda rehabilitates and redeems those institutions, but also how it fails to address the ongoing harms of homophobia and transphobia. As the vulnerability of people facing homophobia and transphobia, especially those targeted by police and immigration enforcement, and those without property, employment, or health benefits expands, increasing formal state recognition through marriage, anti-discrimination law, and military service offers little respite for those facing the most dangerous manifestations of homophobic and transphobic violence.

Additionally, legal equality campaigns have been critiqued for the ways that they tend to produce narratives of deservingness that divide constituencies facing harm and violence. Rights claims frequently include messaging about how the marginalized group “deserves” rights, and that deservingness rests on portrayals of the group as “normal,” “hardworking,” “law-abiding citizens,” and other such tropes. These frames of deservingness reify key divides in US culture and politics that establish and justify the marginalization, criminalization, and abandonment of people of color, prisoners, people with disabilities, people on public assistance, and other demonized populations. Deservingness is constituted through talking points that distinguish the rights-seeking group from those who are implicitly understood as undeserving. In the context of equal rights campaigns, these portrayals have sought to establish deservingness by portraying propertied same-sex couples who “deserve” children because of their wealth, monogamy, patriotism, and heteronormativity. The legal rights sought through these campaigns tend to match up to the deserving-constituency frameworks established. The reforms make adjustments that are most likely to benefit those whose lives match the image of the deserving rights-seeking couple and are very unlikely to change or improve the circumstances of those facing brutal homophobia and transphobia outside of the circle of deservingness.

In sum, critics of legal equality campaigns have identified at least four key concerns. Legal equality campaigns tend to achieve what Critical Race Theorists have called “preservation through transformation,[16] transforming what the law says about a marginalized group but preserving the underlying status quo of maldistribution and state violence that group faces. Second, legal equality campaigns portray the problem as individual discrimination, obscuring the realities of systemic maldistribution and violence. Third, rights advocacy tends to produce narratives about institutions and systems in which advocates seek equality as good and fair systems that need only include the missing population so that they can join the exalted institution. Fourth, this advocacy produces binaries of deservingness and undeservingness in order to articulate belonging in exclusionary institutions and systems. The new rights tend to be crafted around these binaries, making them inaccessible for those in the worst circumstances. The mobilization of tropes of deservingess further demonize and endanger the most vulnerable members of the constituency.

#### Understanding violence enacted against trans/queer people statistically is woefully inadequate – the anti-black and anti-queer nature of the law ensures that the nature of violence is hidden

Stanley 21, Eric A. Stanley is an associate professor in the Department of Gender and Women’s Studies at the University of California, Berkeley. They are also affiliated with the Program in Critical Theory and the Haas LGBTQ Citizenship Research Cluster (Eric, “1. Near Life: Overkill and Ontological Capture” in *Atmospheres of Violence: Structuring Antagonism and the Trans/Queer Ungovernable*, Duke University Press)

Cold Calculations

Can one recognize what is made to exist beyond recognition—the remains of a missing queer or the identity of an unnamed trans woman whose body is never claimed? How do we measure the pain of burying generations of those we love and those we never knew? Rashawn Brazell’s brutal end asks these questions through its calculus of trauma. This kind of loss instructs a precarious organization, a kind of trace of that which was never there, a death that places into jeopardy the category of life itself. My aim here is not an investigation that simply confirms that which those living this proximity to death already know but to build out a vocabulary for a war of position that might collectively overwhelm the world in which it persists.

The numbers, degrees, locations, kinds, types, and frequency of attacks—the statistical evidence that is meant to prove that a violation really occurred, are the legitimizing measures that dictate the ways we are obliged to understand harm. Data are translated into policy that calls for yet another study—the loop of bureaucratic knowledge ensures we know little. Indeed, statistics as an epistemological project may be another way the enormity of anti-trans/queer violence is disappeared. The trouble with thinking only or primarily statistically about violence is both a theoretical and a material trap. Although statistical evidence is assumed to account for rates of occurrence and severity, statistics seem to have a way of ensuring that Rashawn Brazell’s head is never found. Horrifically, because his head has yet to be recovered, the “actual” cause of death still cannot be officially determined. Not yet dead according to the parameters of the law but experienced as nothing other by his mother and community, Rashawn Brazell’s murder has for this reason, among others, never made it into “hate violence” statistics, which confirms the law’s anti-Black and anti-queer functionality.25

Further, the FBI, through the Criminal Justice Information Services (CJIS) division, collects the only national data of targeted violence. Their database contains categories for religious, racial, and disability “bias,” and anti-homosexual (male and female), anti-bisexual, and anti-heterosexual incidents (for 2017, thirty-two “anti-homosexual” and 106 “anti-transgender” incidents were reported).26 This report is optional for local jurisdictions, and 2017 recorded only 119 incidents based on “gender identity,” consisting of infractions ranging from vandalism to murder, and only sixty-nine “victims” who experienced “multi-bias” incidents. It would seem misguided at best to suggest that the number 119 can really tell us anything about the work of anti-trans violence. Reported attacks on “out” trans/queer people like these data can, of course, only work as a swinging signifier for the incalculable referent of the actualized terror. This is not simply a numerical issue; it is a larger question of the friction between measures and effect. Not unlike the structuring lack produced by any representation that offers us, the viewer, the promise of the real, statistics can leave us with only a fragmented copy of what it might index.27

Reports on anti-trans/queer violence, such as those from the CJIS, reproduce in tandem the impossibility of statistical completeness along with the actual loss of those that fall outside of accounting. The excesses of the official record also constitute it—the subaltern remains of that which can never enter into representation reminds us of the arresting horror of the ever-disappearing archive. Or, put another way, the quantitative limits of what gets recorded as anti-trans/queer violence cannot begin to apprehend the numbers of bodies that are collected off cold pavement and highway underpasses, nameless flesh whose stories of cruelty never find their way into an official account beyond a few scant notes in a police report of a body of a “man in a dress” discovered.28

Even when a murderer is not successful and there is a survivor who could enter the act into the official record, incidents are not often reported to the FBI or local police.29 Abolitionists remind us that the police are still among the largest perpetrators of racist anti-trans/queer harm, from sexual assaults and street harassment to imprisonment and murder.30 With the police or some other tentacle of the prison industrial complex, namely the FBI, as the only collection, processing, and reporting agency for such data, people’s resistance should come as no surprise. This apprehension lives within the collective consciousness that the legal system is organizationally indifferent, at best, toward survivors. Those with proximity to the system know by way of living the second order violation of becoming evidence for a district attorney whose singular aim is convictions.31

However, even with these fragmented and disjointed accounts, missing numbers, and never-recovered body parts, anti-trans/queer violence engulfs. Story after story of dismemberment, torture, mutilation, lynching, and execution coagulate a bleeding history of what it means to exist against the gender and sexual mandates of the state. All available discourse seems unable to get at the terrible enormity of this phenomenon. How can we measure the loss of Rashawn Brazell? The grinding task of transforming memories and skin into calculated data offers us little. Even if his murder made the official number rise, what would we know then that we don’t know now? Would we believe the interlocking systems that emptied his body of the possibility of life would dissolve? Or would we trust that the legal system that has spent its history imprisoning and otherwise disappearing trans/queer people of color would suddenly reverse its architecture of power? What we need, then, is not new data or a more complete set of numbers; our task, it seems, is to radically resituate the ways we conceptualize the meaning of violence as fundamental and not antagonistic to our current condition. It is only by beginning there that we might find an ending.32

#### Discourses of contagion are not purely rhetorical but instigate material, political, social violence through a devaluation of contagious entities as non-living. Creating state interventions to quarantine and eliminate infectious bodies – produces distance that justifies violence against the Other.

**Nixon and Servitje 16** (Kari, English Professor, Southern Methodist University. Lorenzo, Department of English, University of California Riverside). 2016. January 21, 2018. ISBN 978-1-137-52140-8 ISBN 978-1-137-52141-5. DOI 10.1057/978-1-137-52141-5///BS

As shown here, contagious entities (which can be broadly defined as parasitic, including viruses) are seen as “less-than-living” or “non-living” because they are deemed not fully independent, complete, self-contained, productive, and hence governable. Accordingly, the **humans likened to such contagious entities in this paradigm are also regarded as less productive**, less useful, **less manageable, less human, and thus less living.** Dubbed as **microbial foes, bodies that evade** the biopolitical principle of **political obedience and economic productivity are identified, traced, contained, eliminated** if necessary, and thus managed. In his analysis of parasite as a political concept, Ander M. Gullestad (2011) points to Ayn Rand’s use of the parasite metaphor in her speech on February 9, 1961, in which she argued that “only rational, productive, independent men in a rational, productive, free society” are of value, while those who receive social benefits are “parasites, moochers, looters, brutes and thugs” who have “no value to a human being” and “[treat a society] as a sacrificial animal and penalizes him for his virtues in order to reward them for their vices” (emphasis original). In Rand’s view, an altruistic society is one that costs independent men’s lives to save interdependent beings. However, as David Harvey (2007) reveals, neoliberalization (of which Rand provided a philosophical justification) has relied on invasive state interventions for its maintenance and expansion and has never been able to fulfill its own ideology of independent, laissez-faire capitalism in reality. This hierarchical, self-contained view of the “human” and “life” is the fundamental problem in contagion discourses, as it directly influences who will **survive and who will be deemed as the threat to the survival of humanity**. Once certain beings are categorized as less-than-human, less-than-living, or “moochers,” it is not difficult to imagine how those beings would be treated by supposedly fully human beings in times of crisis. This is especially problematic because it is precisely the mechanism by which people who are at the bottom of the hierarchy of “humanness” are treated as pathogens, threatening the existence and progress of the human species. Priscilla Wald (2007) shows how the dominant “outbreak narrative” typically represents infectious microbes as monstrous invaders coming from elsewhere. In such narratives, communicable diseases almost always escape and leak from an otherized space, whether it be a “primordial” forest in Africa or a duck farm in Asia where humans live too close to the animals, to a perfectly sanitized “first-world” country, “threatening to transform a contemporary ‘us’ into a primitive ‘them’” (p. 45). As Cindy Patton (2002) painstakingly shows, **such rhetoric** and stock narratives, however, **never remain in pure figures of language, but hold concrete effects in biological, social, economic, and political arenas.** Driven by the myth of the surviving fittest in perpetual danger of others, people’s worth is often measured by their distance from what the human is supposedly not: animal, colored, women, foreign, primitive, queer, pervert, or sick. Such otherized bodies are treated as colonies, always “presumed to be infectious” and thus constantly posing danger to the colonizer, “presumed open to infection” (p. 39). Humanness, not only life, is also colonially imagined as an independent, self-contained unit that is both precariously defined and endangered by its others. Yet, as Le Corbusier’s “cellular” blocks have shown, the assumed independence of individual units in a system is most likely based on concealed dependence on the neglected parts of the system. Hierarchical distinction and segregation between different units promise efficiency and sanitization at the expense of social and moral contact. Whether the spatial separation is among different social functions or degrees of pollution, it has implications beyond its physical iterations. Creating physical and social distance is the first step in creating psychological distance between the self and the other. The segregation of the “less-than-human” bodies and the division of labor render oppression on those bodies invisible and concealed, which naturalizes and perpetuates such oppression further. Zygmunt Bauman (1989) remarks that morality is “inextricably tied to human proximity,” as physical distance creates moral indifference to and negligence of the consequences of our actions and social structure (pp. 192–3). In his view, the Holocaust concentration camps were the epitome of the dark side of modern space organization based on separation and efficiency. In a modern, rationalized society, human actions can have greater effects via technological advancement, whereas the consequences of the actions become invisible and remote (p. 193). Bauman rightly reckons modern weapons the “most obvious example of the technique which places the victims out of sight, and hence renders them inaccessible to moral assessment” (p. 193). In the era of drone wars, the technology of killing can distance drone operators from the consequences of their actions thousand miles away, estimating “collateral damage” only with some remote footage on their computer screens with a strange resemblance to playing role-playing video games. Strangely, this technology of death is now seen as a strategy of life. As modern regimes began to assume the role of the “managers of life and survival,” exercising power at “the level of life, the species, the race, and the large-scale phenomena of population,” wars became “waged on behalf of the existence of everyone [and] entire populations are mobilized for the purpose of wholesale slaughter in the name of life necessity: massacres have become vital” (Foucault 1990 , p. 137). Similar to the countless wars declared to protect the lives of “us” at the expense of “them,” outbreaks of communicable diseases have also been active sites of struggle where the dominant hierarchy of life is both reproduced and contested. In such struggles, **the hierarchization of the “human” or the “living” has directly influenced the question of who should live or die under which conditions.**

#### Overkill is the rationalized response to trans/queer nothingness.

Stanley 21, Eric A. Stanley is an associate professor in the Department of Gender and Women’s Studies at the University of California, Berkeley. They are also affiliated with the Program in Critical Theory and the Haas LGBTQ Citizenship Research Cluster (Eric, “1. Near Life: Overkill and Ontological Capture” in *Atmospheres of Violence: Structuring Antagonism and the Trans/Queer Ungovernable*, Duke University Press)

Surplus Violence

Overkill is a term used to indicate such excessive violence that it pushes a body beyond death. Overkill is often determined by the postmortem removal of body parts, as was the case with both Lauryn Paige and Rashawn Brazell. The temporality of violence, the biological time when the heart stops pushing and pulling blood, yet the killing is not finished, suggests the aim is not simply the end of a specific person but the ending of trans/queer life itself. This is the time of trans/queer death—when the utility of violence gives way to the pleasure in the other’s immortality. If trans/queers, along with others, approximate nothing, then the task of ending, of killing that which is constituted as already dead must go beyond normative times of life. In other words, if Lauryn Paige was dead after the first few stab wounds, then what do the remaining fifty wounds signify?

The legal theory that is offered to nullify the practice of overkill often functions under the name of the trans- or gay-panic defense. Both of these defense strategies argue that the murderer became so enraged after the “discovery” of either genitalia or someone’s sexuality they were forced to protect themselves from the threat of trans/queerness. Estanislao Martinez of Fresno, California, used the trans-panic defense and received a four-year prison sentence after admittedly stabbing J. Robles, a Latina trans woman, at least twenty times with a pair of scissors. Importantly, this defense is often used, as in the case of Gwen Araujo, J. Robles, and Lauryn Paige, after the murderer and victim had engaged in sex. The logic of the trans-panic defense as an explanation for overkill, in its gory semiotics, offers us a way of understanding the place of nothingness. Overkill names the technologies necessary for, and the epistemic commitment to, doing away with that which is already gone. Here, trans/queer life is a threat that is so unimaginable that one is forced to not simply murder but to push the dead backward out of time, out of history, and into that which comes before. Yet this overkill registers as little in the social—the double bind of inhabiting the place of both menace and void.36

In thinking the overkill of Lauryn Paige Fuller and Rashawn Brazell, I return to the ontopolitical category of nothingness—the shadow of liberal democracy. The place of nothingness reemerges in its elegant precision with each case I offer—the repetitious futility of bringing into representation that which escapes it but remains in a para-vitalist order. By resituating this question in the positive, the something more often than not translated as the human is made to appear. Here the category of the human assumes generality, yet is activated, or more precisely weaponized, in the specificity of history and politics. To this end, the human, the something of this query, names the rights-bearing subjects or those who can stand before the law—the beneficiary of equality. The human, then, makes the nothing not only possible but necessary. Following this logic, the work of death, of the death that is already nothing, not quite human, binds the categorical (mis)recognition of humanity. The human resides in the space of life, and under the domain of Man, whereas the trans/queer inhabits the place of compromised personhood and in the zone of death. As perpetual and axiomatic threat to the human, the trans/queer is the negation, through inclusive exclusion, of democracy’s proper subject.

Understanding the nothing as the unavoidable double of the human works to counter the arguments that suggest overkill and anti-trans/queer violence at large index a pathological break, and that the severe nature of these killings signals something extreme. In contrast, overkill is that which constitutes, via negation, equality’s form, which is lived by many as unfreedom. Or put another way, if the state is the enactment of a majoritarian collective unconscious, then its own intelligibility, or its own will to power, is rendered through the figure of the internal enemy and the mandatory forms of liquidation needed to face this inside/outside threat. Overkill, the calculated practice of gratuitous force, then, is the proper expression to the riddle of the trans/queer nothingness. However, the spectacular scene of overkill must not be singularly pathologized as this would, yet again, privatize violence’s epistemology under the individual while its structure remains intact. In the end, the killer never works alone. These vicious acts, therefore, must be held as an indictment of the very social worlds of which they are ambassadors. Overkill is what it means, what it must mean, to do violence to that which is nothing.37

#### The alternative is to reject the affirmative in favor of ungovernability.

Stanley 21, Eric A. Stanley is an associate professor in the Department of Gender and Women’s Studies at the University of California, Berkeley. They are also affiliated with the Program in Critical Theory and the Haas LGBTQ Citizenship Research Cluster (Eric, “Coda: Becoming Ungovernable” in *Atmospheres of Violence: Structuring Antagonism and the Trans/Queer Ungovernable*, Duke University Press)

Seditious Life

In defiance of both the liberal statist hypothesis that the social order would, given the direct power, equally distribute life chances, and a libertarian antistatism that believes all structures that do not directly benefit them are impediments to their free market of domination, is the protracted struggle of trans/queer sedition. While this might appear adjacent to a left melancholia or perhaps nihilistic edgeplay, the difference between reconsolidation and resistance, accommodation and refusal, is precisely how we inhabit impossibility. It is not that we have no tradition to look toward that offers beyond the cold desolation that insists, yet again, on democracy’s modification as our only chance. Grown through this boundless violence is also an ecstatic vitality, even in death, that builds a collective revolt beyond the reign of pragmatism and its armored logics.13

If the attempt to fashion a more perfect democracy is also the order under which its deadly force expands, then ungovernability becomes an abolitionist way of life. The charge of ungovernability, a behavior recast as being, disturbs not just the social but the social’s coherence that designates some existence as beautiful disruption. Sylvia Rivera’s 1973 climb to the top of a TERF-swarmed stage and her exasperated “Revolution now!” was not just another politic. It opened, by way of desecrating the political, toward a post-politic. In effect, she cleared a path through the resolve of brutality she knew as democracy’s nonchoice. Outvoted by the Gay Liberation Front and Gay Activist Alliance, silenced by the Gay Freedom Day’s vocal majority, she, along with her STAR sisters, knew there was no home to be found there. It was her unruliness, the inability of either normative culture or the lesbian and gay political order to contain her that she was deeply punished for. However, it was also her riotous theory in action.14

Ungovernability finds its legal application in the juvenile court system as a charge for youth who live in refusal. Not surprisingly, Black and Brown trans/queer youth are often judged as such for repudiating the authority of a parent or guardian. These “status offenses,” which include truancy, running away, and consuming alcohol, are actions that break the law only because the accused is under legal age. As wards, the legal category of youth produces numerically young people under the jurisdiction of others and who are to some degree also their legal responsibility. This unique relationship became nefariously clear when Kamala Harris chose to aggressively prosecute the parents of Black and Brown truant youth when she was the district attorney of San Francisco.15

The assumed protocol via federal guidelines is to keep young people with their legal guardians if they appear in youth courts under status offenses. Yet, for others it is a homophobic and/or transphobic parent who is petitioning to have them removed from their custody and placed in juvenile jail. The non-personhood of trans/queer youth is confirmed through the mark of ungovernability in an attempt to relinquish legal accountability. As is undeniable, trans/queer youth are habitually physically and emotionally terrorized in schools; then, in an attempt to survive, they often refuse to return. Truancy, for most young people, would not find them in juvenile jails, but if their parent or guardian is also invested in their desolation then the lockup is almost certain.

Along with truancy, the sexual practices (even as accusation) of trans/queer youth can find them beyond the governance of their parents’ projected cis heterosexuality. In deep Foucauldian realness the court performs its disgust by demanding every titillating detail. The state revels in its forced disclosure. These youth are rendered “incorrigible” because of consensual queer sex, while their straight peers escape the severity of such consequences. Moralism reappears in the *neutral* space of the court to reconfirm the court’s affinity to non-neutrality. Trans/queer youth are also sometimes held in contempt for presenting in a way that confirms their gender if that presentation contests the judge’s desire. Compounding the cycles of incarceration, if youth that are awaiting trial have been removed from their parents’ or guardians’ custody, they are often forced to remain incarcerated in pretrial detention. De facto sumptuary laws and sexual morality become relegislated as the conditions of captivity for youth who refuse to remain an “object in the midst of other objects.”16

“The child’s habitual disregard of the lawful and reasonable demands of his caretakes and that the child is beyond their control”: thus the Louisiana Children’s Code designates ungovernability as twinned evasion.17 Given the state’s foundational violence, being beyond the control of that same system is also an attempt to find safe passage out of it. Indeed, the practices of trans/queer youth, their ability to figure a social world out of the antisociality that envelops them, are not simply a survival strategy, although they are that. A life lived below the incessant charge of bad choices, for those without any good ones, scavenges a post-political plan of attack—youth liberation as guerrilla warfare to destitute the state.18

Such contemptuous living, even in the small space of habitual disregard, is countered by harm’s escalation, here in the form of youth imprisonment. Yet these practices of refusal also open possibility after anything that might resemble options has disappeared. While the state pathologizes and criminalizes young people’s ungovernability as yet another symptom of their unwillingness to adhere to white civil society, their methods persist as a rebellion against that which produces them as persons in waiting, at best, while practice relegating them to democracy’s negativity. Or, put another way, these acts stack together to reveal shared tactics of survival—a sociality of bad kids who know the goodness of group disruption.

## ON

### Solvency

#### No reverse causal evidence that says the plan is necessary or sufficient

#### Reforms based in innovation and competition are bad BUT non-US countries now solve vaccine access—the conclusion of their author

1AC Amaka Vanni 21. PhD and LLM degrees in International Economic Law from the University of Warwick. “On Intellectual Property Rights, Access to Medicines and Vaccine Imperialism.” <https://twailr.com/on-intellectual-property-rights-access-to-medicines-and-vaccine-imperialism/>.

Concluding Remarks

What this pandemic makes clear is that the development discourse often touted by developed nations to help countries in the Global South ‘catch up’ is empty when the essential medicines needed to stay alive are deliberately denied and weaponised. Like the free-market reforms designed to produce ‘development’, IP deployed to incentivise innovation is yet another tool in the service of private profits. As this pandemic has shown, the reality of contemporary capitalism – including the IP regime that underpins it – is competition among corporate giants driven by profit and not by human need. The needs of the poor weigh much less than the profits of big business and their home states. However, it is not all doom and gloom. Countries such as India, China and Russia have stepped up in the distribution of vaccines or what many call ‘vaccine diplomacy.’ Further, Cuba’s vaccine candidate Soberana 02, which is currently in final clinical trial stages and does not require extra refrigeration, promises to be a suitable option for many countries in the global South with infrastructural and logistical challenges. Importantly, Cuba’s history of medical diplomacy in other global South countries raises hope that the country will be willing to share the know-how with other manufactures in various non-western countries, which could help address artificial supply problems and control over distribution. In sum, this pandemic provides an opportune moment to overhaul this dysfunctional global IP system. We need not wait for the next crisis to learn the lessons from this crisis.

#### Courts circumvent—Republican judges

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

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

#### Courts won’t apply public welfare because it can’t be defined and must be weighed against private property—here’s an example

O’Sullivan 56 (Opinion by: O'SULLIVAN. Opinion in West Hartford Methodist Church v. Zoning Board of Appeals, 143 Conn. 263, March 13, 1956, Lexis, date accessed 10/23/21)

[\*\*\*8] The first condition of the test is that public convenience and welfare will, in the judgment of the board, be served. HN1 "Public convenience" is not used in a colloquial manner. It is not synonymous with "handy." The word "convenience" connotes that which is suitable or fitting, and "public convenience" refers to what is fitting or suited to the public need. See Abbott v. Public Utilities Commission, 48 R.I. 196, 197, 136 A. 490. The term "public welfare" cannot be precisely defined. "Sometimes it has been said to include public convenience, comfort, peace and order, prosperity and similar concepts . . . ." Opinion of the Justices, 128 N.E.2d 557, 561 (Mass.). To be truly in the public welfare, however, and thus superior [\*\*643] to private property rights, any zoning regulation must be reasonable, not arbitrary, and must confer upon the public a benefit commensurate with its burden on private property. Direct Plumbing Supply Co. v. Dayton, 138 Ohio St. 540, 546, 38 N.E.2d 70. The denial of the exception in the case at bar is not to be taken as a determination that a church is detrimental to the welfare of a community. "The concept of the public welfare [\*\*\*9] is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary." Berman v. Parker, 348 U.S. 26, 33, 75 S. Ct. 98, 99 L. Ed. 27. Ordinarily, a church adds incalculably to the public convenience and welfare and, for the purposes of the case at bar, it can be conceded that that statement is applicable.

#### And even if courts find a public welfare offense, that only entails minor penalties and no reputational cost

Gold 2 (David P. Gold\*\* Columbia University School of Law, Class of 2002; B.A., Brown University; Ph.D. Candidate, University of Pennsylvania. “STUDENT NOTE:Wildlife Protection and Public Welfare Doctrine”, 27 Colum. J. Envtl. L. 633, 2002)

Although the Supreme Court's jurisprudence on public welfare doctrine could properly be said to begin in 1922, with United States v. Balint, 21 it was not until 1952, with Morissette v. United States that the Court used the term "public welfare" to describe a new class of offenses for which it should not be presumed that the legislature intended to require mens rea. 22 The Supreme Court has never offered a simple formula for identifying a public welfare offense - and, in fact, has explicitly declined to do so. 23 However, a synthesis of the cases reveals four qualities that the Court has generally [\*640] considered characteristic of a public welfare offense. First, the crime is always a violation of a modern regulatory statute with little or no common law history. Second, the activity regulated by the statute is of such a nature that those engaging in it can reasonably be expected to take the precautions necessary to avoid violations. Third, conviction brings only minor penalties and little damage to the perpetrator's reputation. Fourth, the statute would be unusually hard to enforce if specific intent were required. 24

# 2nc

#### The role of the judge is to be opaque – opacity reimagines the way that representation and politics of death are weaponized against trans/queer people.

Stanley 21, Eric A. Stanley is an associate professor in the Department of Gender and Women’s Studies at the University of California, Berkeley. They are also affiliated with the Program in Critical Theory and the Haas LGBTQ Citizenship Research Cluster (Eric, “3. Clocked: Surveillance, Opacity, and the Image of Force” in Atmospheres of Violence: Structuring Antagonism and the Trans/Queer Ungovernable, Duke University Press)

Clocking

If, for some, gender only functions in a moment of negative equivalence that produces and does not simply echo what is assumed to appear in the social, what, then, might representation offer for a trans visual culture that resides on the side of flourishing? Or, what remains of the possibility of a liberatory moving image if the medium is moored to the conditions of collective detention? As I outlined in the introduction, mainstream lgbt organizations often argue for casting actors whose identities match their roles and, somewhat less common, for funding lgbt directors and crew to control the means of producing their own images. While these are necessary interventions, nevertheless, there is no guarantee that these adjustments will produce anything less dependent or more radically transformative. The representational regime I’ve been describing is an impasse where a diagnostic is easier to imagine than a corrective by way of speculative prescription. Rather than believing we might be able to “solve” the problem of the image; the charge might be to hold this contraction in the interval of freedom. 49

As is clear, representation has been produced as the primary site of struggle over diversity in the United States from at least the middle of the last century to our current moment. Positive representation, as a visual common sense, traffics normativity’s drive but with a decorative adornment that announces itself as departure. Even with little evidence of its ability to yield a more livable world, positive representation is still offered as the remedy for the years of degraded images that are the history of film. This substitutional logic, where representational change is argued to be analogous to structural change, provides positive representation as both remedy for and evidence of domination’s inevitable end— the promise of equality fulfilled. This respectable image, where neoliberal ideas of economic maturity and proper individualism transpose the stunning disturbances of gender, racial, and sexual excess to the failures of our insolvent past, reconfirm the idea of our progression. Yet this assimilatory representation is another impossibility, a disciplining intent on exiling pleasure and abundance, while ensuring hostile images are as much in our future as they might belong to the present. 50

For example, the last decade has witnessed a vast proliferation of trans representations that are offered as cure to the relentless economic, psychic, affective, and physical violence many trans people endure. These expanding representations are used to undergird dominant culture’s argument that progress is inevitably unfolding. Yet, returning to CeCe McDonald’s words that begin this chapter, we know that with this increased representation comes sustained or heightened instances of violence. While 2014 was named the “Transgender Tipping Point” by Time magazine, each consecutive year since has counted record numbers of murdered trans women of color in the United States. 51 Among our tasks is to attend to the grim reality that the expansion of even “positive” representation might not have simply a neutral corollary to violence but perhaps a causal one as well. 52

Marsha P. Johnson makes a similar argument about visibility and violence after a 1972 Arthur Bell interview in the Village Voice . Referring to a previously published piece, she suggested that the attention brought to the “girlies” (other gender-­ nonconforming sex workers) increased their harassment and led to their arrest later that week. Linguistic representation in the form of the article produced a broader social understanding of Johnson and her friends, including the geographies and temporalities they lived within which put them more centrally on the police’s radar. We have, then, the contradiction of the representational in that it brings us into the world, while also having the capacity to take us out. Here, the distinction (as contradistinction) between being and nonbeing also maps recognition’s fugitivity. 53

Again, rather than an opening toward recognition— a position where one can make a claim instead of exclusively being claimed— representation for Marsha P. Johnson and Duanna Johnson was the prefiguration of their undoings. Duanna Johnson’s being read as trans led to her initial arrest under “suspicion of prostitution,” a policing practice often referred to as “walking while trans,” in which trans women of color are assumed to always be engaging in sex work when they exist in public. Johnson being clocked, or being brought into the general field of representation as negative equality, led to her subsequent beating in the booking room, and perhaps even her murder.

Being clocked, or being seen as trans, is most readily deployed against a person’s identity as an attempt to destroy their/our coherence. Clocking adheres with the gripping force of catastrophe by recasting the violent act of misgendering as the ability to name the Other out of existence. Misgendering here is not a minor act of miscalculation but a way to reclaim the domain of gender and one’s position as author for those who are most threatened by its fragility. Officer McRae’s “he-­she” and “faggot,” the lacerating words intent on obliteration, enacts the double bind of recognition: being seen by the other brings you into the world— into the field of visibility. But for those already on the edges of vitality, like Duanna Johnson, it is often that which also takes you out of it. Through representation— both the cctv video and descriptions of Johnson in court— the defense was able to produce a reversal of guilt, where the party harmed is, via the magic of the law, transformed into the assumed aggressor. Johnson, and not the state, is made to hold the burden of proof— the surveillant gaze in action. 54

Tracing the racial and gendered parameters of recognition from Fanon and da Silva to Snorton and McDonald, how might we reorient the project of recognition, its prohibitions and its access, toward the nondialectical and nondevelopmental? Or, where might relief be found if we abandon the telos of the assumed subject to come? The brutal scene of Duanna Johnson’s beating, replayed against the composed testimony of the court, reminds us that recognition is not a smooth space of inevitability, even in struggle. Here, it’s the phenomenology of violence that compels us beyond a substitutive logic where life, and life’s recognition, is equally distributed.

Fanon turns our attention to the limits of recognition in the colonial context that I more fully explored in chapter 1. By holding on to the dialectics of structure, he also maintains the teleology of subjectivity, even for those deemed nonsubjects. For Fanon, revolutionary violence offers a way through the totalizing constriction of coloniality, the possibility to move from object to subject, however contingent. Given this, how might we push further on Fanon for those who must remain, even in the postcolony, as da Silva might suggest, “no-­bodies against the state”? This is perhaps an unfair question to levy against Fanon’s thought. Yet this “no-­ body” as nonidentity, or the negation of the negation of identity— not unlike Spillers’s caution against “joining the ranks of gendered femaleness”—might offer “the insurgent ground as female social subject.” 55

From Optics to Opacity

Duanna Johnson’s attack and its cinematic afterlife capture the structures of recognition and misrecognition, representation and disappearance, that constitute the field of the visual. While writing from a place of gender self-­ determination that works toward gender as an “insurgent ground,” what is left of our various analytics of recognition and the images that bring us into the world? Or, how might we return to the beating tape: not simply to offer yet another way to imagine what we already know— that anti-­Blackness, gender normativity, and violence are tightly bound in the production of flesh and that flesh’s destruction— but to ask, yet again, how this bind might be undone. 56 Further, what tactics of production and sabotage might liberate the image from its formalism? This question specifically addresses those trapped in the interval of seeing and being seen where subject and object are collapsed. As a praxis of imagination and survivance, we must pose it without a fantasy of closure. To put it another way, at the center of the problem of recognition lies this: How can we be seen without being known, and how can we be known without being hunted? 57

Being a “no-­ body against the state,” a position some are already forced to live, stands against the sovereign promise of positive representation and the fantasy of sovereignty as assumed under claims of privacy. Read not as absolute abjection but as a tactic of interdiction and direct action, being a no-­body might force the visual order of things to the point of collapse. On the issue of recognition and radical singularity, Édouard Glissant suggests, “From the perspective of Western thought, we discover that its basis is this requirement for transparency. In order to understand and thus accept you, I have to measure your solidity with the ideal scale providing me with grounds to make comparisons and, perhaps, judgments. I have to reduce.” 58 This reduction, which Fanon might call being overdetermined, is, as we know, unequally distributed. Glissant offers a totality of relation in opacity, the work of nontransparency that allows for nondialectic difference— the collectivization of radical singularity. Glissant continues, “Agree not merely to the right of difference but, carrying this further, agree also to the right of opacity that is not enclosure within an impenetrable autarchy but subsistence within an irreducible singularity.” 59 We might read the current order of popular trans representation to be a variation of agreeing to only the “right of difference,” as transparency is the precondition of visibility politics.

Opacity is useful here not necessarily as a practice of going stealth, residing below or beside the regimes of being seen but not known, although it might be imagined as such for those who find life there. For Glissant it is a method of solidarity without being grasped. 60 Here I’m suggesting it might be one way to theorize a radical trans visuality that attends to the universal and the particular as non-­interchangeable. Opacity with representation: an irreconcilable tension that envisions something more than the pragmatism of the transparent and its visual economies of death.