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#### Interpretation: The aff must extend the scope of the ‘core’ antitrust laws which are Sherman, Clayton, and FTC

Michael A. Rataj 21, PC, Law Degree from the Detroit College of Law, “Consequences for Breaking Antitrust Laws”, 5/12/2021, https://www.michaelrataj.com/blog/2021/05/consequences-for-breaking-antitrust-laws/

The core antitrust laws are…

The three core antitrust laws are the Sherman Act, the Federal Trade Commission Act and the Clayton Act. The Sherman Act primarily prohibits unreasonable restraint of trade and monopolization. Those who are in violation of the Sherman Act may face hefty fines, up to $100 million, and up to 10 years behind bars.

The FTC Act prohibits unfair practices or acts and unfair approaches to harming competition. Only the FTC can file cases under this act. The Clayton Act is a catch-all that covers every practice not covered by the Sherman and FTC Acts. Then consequences for violations of both of these acts are usually civil in nature.

#### Violation: The plan just says to prohibit business firms --- that doesn’t expand the scope of the above laws but could amend any law which is extra topical – reject it because allows them to claim offense outside of the scope of the topic.

#### And lack of specification of which antitrust law they alter is a voting issue – allows for the aff to avoid specific links to aff action

### 1nc – k

#### Empiricism has created a White Hyperreality that establishes itself as correct through the constant proliferation of antiblack violence.

Gillespie 20. John Gillespie ’20, PhD student at UC Irvine, Comparative Literature, “ON THE PROSPECT OF BLACK BAUDRILLARD: NOTES ON THE PRECESSION OF SIMULACRA”, Mumble Theory, 7/14/20, Paper presented at Wake Forest University, https://mumbletheory.com/2020/07/14/on-the-prospect-of-black-baudrillard-notes-on-the-precession-of-simulacra/

In Baudrillard, the images and representations of the real have become indistinguishable from the real itself such that a simulation may stand in for reality without any semblance of reality being lost. The simulation is the reality. The reality would cease to be a scene of the Real without the simulation. Thus, in Baudrillard’s account of “How We Mistook the Map for the Territory”[1] the map has not so much as receded access to the territory itself, but has instead become so enmeshed in the territory that there is a hazard in being able to determine the difference. Thus, he begins Simulation and Simulacra with what he calls, “The Precession of Simulacra.” A precession is defined as, “the slow movement of an axis of a spinning body around another axis due to a torque (such as gravitational influence) acting to change the direction of the first axis.” With the use of this term, we can infer that at the start of Baudrillard’s magnum opus what he is attempting to describe in his philosophical sociology of his increasingly post-modern Euro-Western society is a transition in the spinning of its axis. This transition is a transition of which “due to a torque (such as gravitational influence)” has acted to change the direction of the first axis. This transition, according to Baudrillard, can be read in and through the axiomatics of Western relations to the technology and techniques of the sign. Baudrillard states: All Western faith and good faith became engaged in this wager on representation: that a sign could refer to the depth of meaning, that a sign could be exchanged for meaning and that something could guarantee this exchange – God of course… Representation stems from the principle of the equivalence of the sign and of the real (even if this equivalence is Utopian, it is a fundamental axiom). Simulation, on the contrary, stems from the Utopia of the principle of equivalence, from the radical negation of the sign as value, from the sign as the reversion and death sentence of every reference. Whereas representation attempts to absorb simulation by interpreting it as a false representation, simulation envelops the whole edifice of representation itself as a simulacrum. [2] Thus, what is brought about is the transition from the Modern axis of Representation to the Post-Modern regime of Simulation. The former presupposes a direct link between the word and its object, the linguistics of the category and the materiality of the thing being categorized, suggesting that what is spoken speaks to what is true. The Post-Modern axis of Simulation is an oscillation that negates the value of the word, the sign, and the category – moving from one pole of terminology to the other suggesting that what was once the opposite of the signified can also be found internally within its signification. For example, Television under a regime of Representation is an articulation of a re-presentation of the Real, but under Baudrillard’s description Television becomes a simulation of the Real – a reality TV, no longer separate and unequal, but integrated and enveloped. Is the President a real President or a President acting as President on TV? Baudrillard would say he is both, which is to say that he is a neither, which is to say there is no President. Thus, this transition in axiological relations to the real is a transition that he states, “is the generation by models of a real without origin or reality: a hyperreal.”[3] Thirteen years after his death, it would seem that such a characterization, like the proclamations of the death of God by Baudrillard’s philosophical predecessor Friedrich Nietzsche, had been proclaimed all too soon. Yet, here we are, we children of the dawn of the 21st Century, and we cannot help but find ourselves in a web of virtualities, simulations, fake news (which in itself is a perfect phrasing of the imbalance of opposites in accordance to Baudrillard), and viral videos of violence that pose no threat nor circulate any meaning. In a way, Baudrillard was the most absurd of the post-structuralist/post-modernist thinkers. In this I admire him, for he was the most willing to verbalize the fracturing of a Worldview that had begun to unfurl in the aftermath of the revolutions of the 1960s. In addition to this, what makes Baudrillard’s account of this turn in relation to the sign is the location in which he places the evidence of the transformation in axioms from the realism of modernity to the hyper-realism of post-modernity. While readings of Baudrillard and the post-modern often suggest that it was solely the technological transformations from within an increasingly cybernetic and algorithmic technocapitalism that drove Baudrillard’s insistence until death that the simulation had made the Real territory impossible to grasp, it is Baudrillard’s problematic meditations on the “Savage” which drive home the truth of the hyper-real built as it is on the grounds of a violent hyper-chaos. Indeed, for what the Savage reveals to Baudrillard is none other than that which Denise Ferreira Da Silva states boldly namely that, “We had something to do with the crisis of science; we, the others of Man, were upsetting history: our words and deeds unleashed the predicament of the ‘modern order.’” [4] Baudrillard, at the limits of his corporeal integrity, suggest a similar truth from the position of the fractured subject position of Man – elaborating the paradoxes of the capacities that bore him. He states, “Ethnology brushed up against its paradoxical death in 1971, the day when the Philippine government decided to return the few dozen Tasaday who had just been discovered in the depths of the jungle, where they had lived for eight centuries without any contact with the rest of the species, to their primitive state, out of the reach of colonizers, tourists, and ethnologists. This at the suggestion of the anthropologists themselves, who were seeing the indigenous people disintegrate immediately upon contact, like mummies in the open air.”[5] The genocidal encounter of ethnology with its object of investigation reveals the paradoxes of the Western real. In order for its real to live, its object must die. In order to prevent the death of the object, the strategies of procuring the real must die. In order to protect the real, the simulation of the real must rise. The Real is resurrected through a simulation. Thus, the Tasaday after being hoarded into ethnological description, categorical schemata and onto-ethico-epistemological accounts rooted in colonization which labelled the “newly found primitives” as exemplars of the primal vestiges of the Human species, will be returned to the jungles from whence they came to be a living museum to the past (which is also the present since the Tasaday are still with us) of Human evolution. In other words, the Tasaday/Savage reveals the simulation. In the Savage, the paradoxes of science, ethnology, and the Real are made to bear. Hence why Baudrillard states: The Indian thus returned to the ghetto, in the glass coffin of the virgin forest, again becomes the model of simulation of all the possible Indians from before ethnology. This model thus grants itself the luxury to incarnate itself beyond itself in the ‘brute’ reality of these Indians it has entirely reinvented – Savages who are indebted to ethnology for still being Savages: what a turn of events, what a triumph for this science that seemed dedicated to their destruction![6] Where Baudrillard takes his analysis both all too far and all too Human is in suggesting that the condition which has made the Savage, a Savage, is a condition which has not only become a universal condition by way of the universal expression of the simulation of signs, but a condition which belongs to the sign alone and not to the materiality of severed flesh, broken necks, and unreclaimable bodies. The absurdity of Baudrillard lies not so much in his claim that the Savage has been articulated in ethnology as an amalgam of simulations and simulacra but rather in his insistence that this relation of simulation and simulacra is the same for all Beings across the board (because post-modernity) including but not limited too Baudrillard’s own ontological capacity as a White Being and henceforth, the still long-enduring typological face of Humanity par excellence. In Baudrillard’s own words, “We are all Tasadays, Indians who have again become what they were – simulacral Indians who at last proclaim the universal truth of ethnology.”[7] It is at this point in Baudrillard’s work that “On the Prospect of Weaponized Death” begins not as a blackening of Baudrillard, but as a critique of its elaboration. For what one finds in Baudrillard’s theory of the Real is the limits of the sign to signify a universality for all positionalities thought to be interlocuting from within the social space of civil society. For in Baudrillard’s theory, there had once been a Real underneath the sign, and now the Real is the simulacrum. In this transition from the Real to the Hyper-Real, one can suggest that at one point there was a representation that adequately separated the Indian as Indian and Western Man as Western Man, just as one can suggest that now, with the triumph of the simulation, we have all become savages. Yet, such a theory has not read Hortense Spillers nor grasped the severity of her claims that “Sticks and stones might break our bones, but words will most certainly kill us.”[8] For what one gathers in this poetically poignant critique of the sign is the materiality of semiotics. A materiality that Baudrillard and most of the post-structuralist interest in the signifier occludes. To take account of the words that kill is to take account of the violence of the signifier and the materiality of the word. Put differently, Hortense Spiller’s “words will most certainly kill” is a reminder to remain conscientious about the materiality of the map – no matter its arrangement over and in-between the territory. Or better yet, Hortense Spiller’s “words will most certainly kill” is a reminder that language is haunted by a violence which is “the grammar and ghost of every gesture.”[9] That there can be a Being for which the sign – language nor image – is not enough to render coherent or legible its grammar of suffering is forgone as the attempt of procuring universal entrapment is announced in Baudrillard. Yet, the cataloguing of the World in accordance to hierarchical variations of difference – by way of axiological simulations of abstractions that begin to map the territory of the post-modern and hyper-modern landscape is neither equally distributed nor is it all a game of sign, signifiers and semiotics. In fact, the very conditions of possibility for such a cataloguing of personhood as well as its post-Sixties transformations begins with the bracketing off of Blackness as the nadir of ethnology. So that if we see this category of the damnés that is internal to (and interned within) the prison system of the United States as the analog form of a global archi-pelago, constituted by the Third- and Fourth-World peoples of the so-called “underdeveloped” areas of the world—most totally of all by the peoples of the continent of Africa (now stricken with AIDS, drought, and ongoing civil wars, and whose bottommost place as the most impoverished of all the earth’s continents is directly paralleled by the situation of its Black Diaspora peoples, with Haiti being produced and reproduced as the most impover- ished nation of the Americas)—a systemic pattern emerges. This pattern is linked to the fact that while in the post-sixties United States, as Herbert Gans noted recently, the Black population group, of all the multiple groups comprising the post-sixties social hierarchy, has once again come to be placed at the bottommost place of that hierarchy(Gans, 1999), with all incoming new nonwhite/non-Black groups, as Gans’s fellow sociologist Andrew Hacker (1992) earlier pointed out, coming to claim “normal” North American identity by the putting of visible distance between themselves and the Black population group (in effect, claiming “normal” human status by distancing themselves from the group that is still made to occupy the nadir, “nigger” rung of being human within the terms of our present ethnoclass Man’s overrepresentation of its “descriptive statement” [Bateson 1969] as if it were that of the human itself), then the struggle of our times, one that has hitherto had no name, is the struggle against this overrepresentation. [10] When Baudrillard reduces the Savages condition to a condition of hyper-reality that “we all” must undergo he forgets the ways in which his own present ethnoclass of Man still retains the overdeterminate grounds for authorizing and signifying its own “descriptive statement” as if it was the only meta-narrative that mattered and for that matter possessed Real matter. He also leaves unthought or never begins to consider the ways in which Blackness gets locked out of narrative capacity itself by virtue of occupying this ‘nadir’ of Humanity. Thus, what is the “nigger rung of being Human” in Wynter, I found to be “Blackness as Slaveness” in Wilderson and the Afro-pessimists. And the violence done to the Slave conditions the possibilities for the axiological signs and concepts which will come to set the scales and terms of il/legibility which will come to situate Man1 as the Rational Man, Man2 as the Biocentric Man, and what I have increasingly identified as Man3 and the Storytelling Man. All of these variations of the Human exists and persist on “bizarre axiological ground.” [11] A ground which drips in the Real of Black blood and paints this suffering over in simulation and simulacra, leaving the Hyper-Chaos of Black reality in the Hyper-Reality of an anti-Black World. What appeared as an account that can only wash away the Real, was the Hyper-chaotic ground of the Real, that situates Black death and its disavowal at the limits of signification. Thus, as Wilderson claims: “We need a new language of abstraction to explain this horror,”[12] a language of abstraction which we can say will not be found in the work or under the name of Jean Baudrillard.

#### Anti-trust reform begs the question of economic competitiveness for who? and what do those systems rely on? State resolutions and governmentality only forwards this very same antiblack agenda and drains the life and future from Black and Native folks

**Warren 15,** Calvin Warren Assistant Professor in WGSS. He received his B.A. in Rhetoric/Philosophy (College Scholar) from Cornell University, “Black Nihilism and the Politics of Hope”, 2015, https://www.jstor.org/stable/pdf/10.14321/crnewcentrevi.15.1.0215.pdf?refreqid=excelsior%3A9fc48bfdf875d066419672fefae51719

The politics of hope masks a particular cruelty under the auspices of “happiness” and “life.” It terrifies with the dread of “no alternative.” “Life” itself needs the security of the alternative, and, through this logic, life becomes untenable without it. Political hope promises to provide this alternative—a discursive and political organization beyond extant structures of violence and destruction. The construction of the binary “alternative/no-alternative” ensures the hegemony and dominance of political hope within the ontoexistential horizon. The terror of the “no alternative”—the ultimate space of decay, suffering, and death—depends on two additional binaries: “problem/ solution” and “action/inaction.” According to this politics, all problems have solutions, and hope provides the accessibility and realization of these solutions. The solution establishes itself as the elimination of “the problem”; the solution, in fact, transcends the problem and realizes Hegel’s aufheben in its constant attempt to sublate the dirtiness of the “problem” with the pristine being of the solution. No problem is outside the reach of hope’s solution— every problem is connected to the kernel of its own eradication. The politics of hope must actively refuse the possibility that the “solution” is, in fact, another problem in disguised form; the idea of a “solution” is nothing more than the repetition and disavowal of the problem itself. The solution relies on what we might call the “trick of time” to fortify itself from the deconstruction of its binary. Because the temporality of hope is a time “not-yet-realized,” a future tense unmoored from present-tense justifications and pragmatist evidence, the politics of hope cleverly shields its “solutions” from critiques of impossibility or repetition. Each insistence that these solutions stand up against the lessons of history or the rigors of analysis is met with the rationale that these solutions are not subject to history or analysis because they do not reside within the horizon of the “past” or “present.” Put differently, we can never ascertain the efficacy of the proposed solutions because they escape the temporality of the moment, always retreating to a “not-yet” and “could-be” temporality. **This “trick” of time offers a promise of possibility that can only be realized in an indefinite future, and this promise is a bond of uncertainty that can never be redeemed, only imagined.** In this sense, the politics of hope is an instance of the psychoanalytic notion of desire: its sole purpose is to reproduce its very condition of possibility, never to satiate or bring fulfillment. This politics secures its hegemony through time by claiming the future as its unassailable property and excluding (and devaluing) any other conception of time that challenges this temporal ordering. The politics of hope, then, depends on the incessant (re)production and proliferation of problems to justify its existence. Solutions cannot really exist within the politics of hope, just the illusion of a different order in a future tense. The “trick” of time and political solution converge on the site of “action.” In critiquing the politics of hope, one encounters the rejoinder of the dangers of inaction. “But we can’t just do nothing! We have to do something.” The field of permissible action is delimited and an unrelenting binary between action/ inaction silences critical engagement with political hope. These exclusionary operations rigorously reinforce the binary between action and inaction and discredit certain forms of engagement, critique, and protest. Legitimate action takes place in the political—the political not only claims futurity but also action as its property. To “do something” means that this doing must translate into recognizable political activity; “something” is a stand-in for the word “politics”—one must “do politics” to address any problem. A refusal to “do politics” is equivalent to “doing nothing”—this nothingness is constructed as the antithesis of life, possibility, time, ethics, and morality (a “zero-state” as Julia Kristeva [1982] might call it). Black nihilism rejects this “trick of time” and the lure of emancipatory solutions. To refuse to “do politics” and to reject the fantastical object of politics is the only “hope” for blackness in an antiblack world.

#### Race slavery is the historical basis of the economy

Nakagawa, 5/4/2012 (Scot, Senior Partner at Change Lab, “Blackness Is The Fulcrum” Changelab: Strategy, Research & Vision for Racial Justice http://www.changelabinfo.com/2012/05/04/blackness-is-the-fulcrum/#.UXaQjbXviSp)

Hang in there with me for a minute and consider this. Race slavery is the historical basis of our economy. Yes, there was/is a campaign of “Indian removal” in order to capture natural resources and that certainly is part of the story. But the structure of the economy is rooted in slavery. Our Constitution was written by slave owners. They managed to muster some pretty nice language about equality, justice, and freedom for “men” because they considered Africans less than human. Our federal system is based on a compromise intended to accommodate slavery. Our concept of ownership rights, the structure of our federal elections system, the segregated state of our society, the glut of money in politics, our conservative political culture, our criminal codes and federal penitentiaries all evolved around or were/are facilitated by anti-black racism. And this is not just about history. Fear of black people drives our national politics, from the fight over Jim Crow in the 50s and 60s, to Willie Horton and the Chicago Welfare Queen in the 80s, and the War on Drugs, starting in 1982 right up to the present. Since 2001, the U.S. has spent about 1.3 trillion dollars on war. Since 1982 we’ve spent over 1 trillion dollars on the drug war.

#### The alternative is a semiotic intervention that breaks down those systems

Gillespie 18 (John D Gillespie, Undergraduate Researcher and Debater at Towson University, “On the Prospect of Weaponized Death,” *Propter Nos*, Volume 2: Issue 1, Insurgency / Exhaustion, Fall 2017, https://www.academia.edu/34839874/On\_the\_Prospect\_of\_Weaponized\_Death, Accessed: 8-18-2018, Ddub)

When the idea for this essay originally came to me, I was at a neighborhood vigil for the late rapper Lor Scoota, an influential figure in the Baltimore hip hop scene.1 After hours of Black tears and suffering, due to the murder of yet another Black person, a burst of black joy emerged as if from the ashes, as folks listened to Scoota’s hit single “Bird Flu” on repeat, and danced around the neighborhood. This burst of black joy must have shook the entire city. Consequently, the Black mourners-turned-dancers were met by the police state issuing a curfew, forcing everyone to go home. The police, in riot gear, surrounded the mourners with guns pointed in their direction and helicopters that circled the West Baltimore neighborhood. Newscasters and cameras poured into the neighborhood as flashing lights beamed down throughout the darkness, where the shiny metallic balloons that read “SCOOTA” still danced in the wind. We were occupied in every direction. There had been no riots, but the police prepared for war as if Baltimore was burning. I could not help but be mesmerized at the militarized guns, the riot shields, the coordination and discipline of the force. I could not help but observe the size and number of police officers-turned-domestic-military. I could not help but be enamored by the spectacular power of the State, and recognize this as the social utility of occupation—to stiffen black existence, to sustain the simulation of white superiority and black inferiority. I could not help but think about the need for a revolution. I was taken by an impulse to destroy the simulation and return to a new Real—a “zero degree of transformation,” a “turn toward blackness.”2 Yet I was also struck by the thought that if a revolution were to come, we could never win. We could never win a revolution, and the death that swallowed Lor Scoota is the same unceasing death that surrounds the people who mourned him, and anyone who attempts to challenge the anti-Black world. It was not easy to come to this conclusion. I still obtain glimmers of hope for the future, but the historical record shows that if the future is anything like the past, the only thing guaranteed is fungibility and accumulation. I remember running home, crying, and writing the beginning sketches of what would become this essay. These sketches became the building blocks for a theory of weaponization—one blackened answer to the question of “how should we live” in the unending age of anti-blackness. I did not write this out of self-righteous radicalism. In fact, I believe that those who write radicalism self- righteously forget that, “Normally people are not radical, normally people are not moving against the system: normally people are just trying to live, to have a bit of romance and to feed their kids.”3 I wrote this out of the sad belief that once we have lost all hope in the prospect of black lives ever being able to live, to matter, to sustain romance and feed their families without an unmoving proximity to death, once anti- Blackness has sucked every bit of spirit we have dry, our only hope is to lose hope, to recognize we cannot win. The end of the World begins once we recognize that a Black sentence is a death sentence, and learn to weaponize it. II. learning to die in the anthropocene must be done for those who were never invited to the anthropos too —Anthropos Black life is lived in a white hyper-reality. By this I mean, black life is lived inside a constituted white fiction which concretizes itself as fact. Black life is a life lived in non-existence; blackness “exists” as a symbol of death that is, but is not. Blackness “exists” only insofar as White Being structures it onto a map of anti-black violence.4 Achille Mbembe corroborates this in his Critique of Black Reason, stating: Racism consists, most of all, in substituting what is with something else, with another reality. It has the power to distort the real and to fix affect, but it is also a form of psychic derangement, the mechanism through which the repressed suddenly surfaces. When the racist sees the Black person, he does not see that the Black person is not there, does not exist, and is just a sign of a pathological fixation on the absence of a relationship. We must therefore consider race as being both beside and beyond being.5 The reality that replaces that which is is a white hyper-reality. This white hyper- realism fixes blackness as “a sign of a pathological fixation.” White hyper-realism is the paradigm whereby consciousness is unable to distinguish between the fictions created by White Being and the Real. It is this fact that permits black death to be subsumed in simulations by each and every (analytic) encounter with Whiteness and the World. Questions like, “Can the Black suffer?” and “Is it capable for the Black to be wronged?” arise due to the inability to access a grammar of suffering to communicate a harm that has never ended, a harm that can never end without ending the World itself. It is for this reason that viral videos of black death, more than opening the possibility for liberal notions of justice, seem to suture the relationship between the mythical and the real that perpetuates itself through the reification of black trauma. Black death, more than deconstructing the ontics of the Human, seems to extend its hyper-reality. Black death makes it harder to distinguish white fictions from any sense of real harm being done to human flesh. The Black is meant to experience its death over and over and over again; and the World itself recycles all its fictions-as-the-Real. Put differently, the White World subjects the Black to perpetual, gratuitous violence, and then uses that violence as evidence to further suggest that the Black is not Human. For how can a Human endure such a thing? The experience of gratuitous violence secures the semiotics of the white hyper-reality. White Disneyland stays intact. Blackness exists at the nexus of fact and fiction, possibility and (non)value, inclusion and exclusion. Blackness is trapped even in saying it’s trapped because the “trapped-ness” of the Black extends to locations where the diction and syntax of White “words don’t go.”6 The Black does not have the grammar to speak against where and how it is trapped since Blackness can only articulate itself through the semiotics of Whiteness. That White Being continues to center black death as the matrix of possibility for its hyper-realist structure indexes the promise of death insofar that White Being is promised futurity. The Black was rendered fungible through the conjunction of the political and the libidinal economy of the anti-Black world. Blackness gave birth to the commodity and the economy of signification that structures the cartography of the Human’s coordinates. This could be said to be a still birth, insofar as the nature of Black life in a white hyper-reality is conducted on a plane that guarantees natal alienation, social, and ontological death. The Black body lives to die; the specter of death shadows it everywhere. What matters crucially here, in our invocation of the hyper-real, is the importance of the Symbolic. The Symbolic is what “structures the libidinal economy of civil society.”7 The Symbolic here is understood as “the representational process” that structures “the curriculum and order of knowledge” and/or “the descriptive statement of the human” in our contemporary World.8 And in this World, white symbolism is everywhere.

In fact, in an anti-Black paradigm, white symbolism is everything. White symbolism over-determines itself as the Symbolic itself, and denounces anything that challenges its genre-specific mode of knowing, seeing and understanding the World. In other words, white symbolism holds a monopoly on the Symbolic in ways that operate “lawlikely so within the terms of their/our order- specific modes of adaptive cognition-for, truth-for.”9 There is no outside to whiteness, to white semiotics, to white constructs of value and reality, to white structuring of libidinal value. And for this reason, like Wilderson, “[I] am more interested in the symbolic value of Whiteness (and the absence of Blackness's value)...”10 in a world of white hyper-reality. Propter Nos 2:1 (Fall 2017) 7 If Blackness is lived in the hyper-real, then there is a hyper-intensification—an overrepresentation—of semiology that dictates the coercive violence of the Black’s (non)existence. The semiotics of White Being is the factitious fiction that simulates the entire World. White Being and black death are part of a globally blood-soaked symbolic exchange that has extended itself over the terrain of the World to such an extent that there can be no distinguishing between the Real and the Non-Real. White Being is that Being for whom ontological capacity exists, whereas the Black is the antithesis to Being, that fleshly matter whose essence is incapacity.11 If “language is the house of being,”12 as Heidegger puts it, then Blackness is trapped at the very center of White Being. Dionne Brand puts it concisely when she writes, “We are people without a translator. The language we use already contains our demise and any response contains that demise as each response emboldens and strengthens the language it hopes to undermine.”13 This abject positionality was codified through a violence so epochal that Modernity itself can be said to have been inaugurated through it. However, at the same time, “the center is, paradoxically, within the structure and outside it.”14 **That black death and anti-blackness exist in this liminal positionality posits the impossible possibility of a rupture in the moment.** For that which is inside the structure, only through being outside the structure, enables the possibility of both sedimentation and disorientation. Jacques Derrida writes, “The function of this center was not only to orient; balance, and organize the structure— one cannot in fact conceive of an unorganized structure—but above all to make sure that the organizing principle of the structure would limit what we might call the freeplay of the structure.”15 If black death centers the structure, then it is somewhere in the perfection and expansion of this antagonism (the inside-outside antagonism) that the cartography of gratuitous anti-Black violence is laid out. **What might happen when what orients the structure becomes insurgent, attacking the structure through that which centers its very Being? What might happen if black death became weaponized in order to further limit the freeplay of the structure—the expansion of White Being?** Afro-Pessimist thinkers, in favor of a diagnostic analysis, tend to veer away from the tradition of critical social theory that prescribes solutions to the analysis in the conclusion of their work. However, **one finds throughout Afro-Pessimist literature a battle cry, a prophetic vision, a pulsing pessimist hope for the “end of the World.” For if Whiteness ended Worlds through its colonial simulations and violent transmutations of Africans into Blacks, then the only way out is an end to the White World.** White Being is irredeemable, and so is the World it fosters. Sexton says, “In a world structured by the twin axioms of white superiority and black inferiority, of white existence and black non-existence, a world structured by a negative categorical imperative—‘above all, don’t be black’—in this world, the zero degree of transformation is the turn toward blackness, a turn toward the shame, as it were, that ‘resides in the idea that 'I am thought of as less than human.’”16 It’s only through black vigilance that the simulacra of White Being is made clear and the spectacle of Propter Nos 2:1 (Fall 2017) 8 gratuitous freedom is made visible. It is somewhere in this structural antagonism, that on the one hand conditions the possibility of the World, and on the other hand conditions the possibility of its end, its limitations, its disorientation, that we found the language to say the unsayable and do the undoable. As **Frank Wilderson reminds us: Black Studies in general and Afro-Pessimism in particular present non-Black academics with more than an intellectual problem. It presents them with an existential problem. The reason is because there’s an aspect of Afro-Pessimism that we don’t talk about...which is that were you to follow it to its logical conclusion, it’s calling for the end of the world...it wants the death of everyone else in the same way that we experience our death, so that one could not liberate Blacks through Afro- Pessimism and be who one was on the other side of that. That’s the unspoken dynamic of Afro-Pessimism.17 If we are engaging in a war in which the symbolic value, the semiotics of this World itself, positions “the Black as death personified, the White as personification of diversity, of life itself,”18 then resistance needs an “unspoken dynamic.” It needs a space where “words don’t go”—a form of guerrilla linguistics, a submarined syntax, an undercommon communication. Perhaps, here, where the conversation is blackened, and the theory is phobogenic, and the journal is Propter Nos, we can allow ourselves to excavate insurgent dictions still lost in the lingua franca of White Being, but full of the specter of black terror, black disorientation. If the Black is death personified, then what might happen if we weaponized our death? What might happen if we recognized the inevitability of that death? What if we began to think that the non-uniqueness of that death was an opening towards the “end of Humanity?” In The Spirit of Terrorism, Jean Baudrillard writes, “When global power monopolizes the situation to this extent, when there is such a formidable condensation of all functions in the technocratic machinery, and when no alternative form of thinking is allowed, what other way is there but a terroristic situational transfer?”19 Terrorism consists of the militaristic tactics used by those who are facing globalized White Being with asymmetrical technologies of terror, violence, intimidation and war. A terrorist is any armed vigilante willing to rupture the system of semiotics through an equally cofounding semiotic. A semiotic that returns one to the “desert of the [Black] Real”—where a “project of total disorder” is unleashed upon the semiotic system.20 Black terrorism is a violence that re-appropriates the death embedded in the Black’s ontological incapacity in order to enable the possibility of a radical capacity—gratuitous freedom.** White Being itself is a decentralized onto- epistemic deployment of violence, **and if violent insurgency is necessary, then the decentralized approach of the black terrorist is necessary to counter the terror of White Being. This being said, black terrorism is perhaps better understood as counter-terror terrorism. We do not have the power to end the World with** life. We only **have the power to end the World through death.** As Baudrillard writes, “The radical difference is that the terrorist, while they have at their disposal weapons that are the system’s own, possess a further lethal weapon: their own deaths.”21 The United States has an international military force, a storehouse of nuclear arms, and the capacity, within their police state alone, to “terrorize” not just one block in Baltimore, but the whole entire world. **Black terrorism is what happens when we heed the Afro-Pessimist call that “A living death is as much a death as it is a living,”22 it is what happens when we take seriously the unsayable in Afro-Pessimism. Black Terrorism is (non)ontological fugitivity that disavows any need to focus on social life—black terrorism steals black death itself from White Being. It is for this reason that Baudrillard speaks to his own White Being and the specter of terror when he says: When Western culture sees all of its values extinguished one by one, it turns inward on itself in the very worst way. Our death is an extinction, an annihilation. Herein lies our poverty. When a singularity throws its own death into the ring, it escapes this slow extermination, it dies its own natural death. This is an immense game of double or quits. In committing suicide, the singularity suicides the other at the same time— we might say that the terrorist acts literally ‘suicided’ the West. A death for a death, then, but transfigured by the symbolic stakes. ‘We have already devastated our world, what more do you want?’ says Muray. But precisely, we have devastated this world, it still has to be destroyed. Destroyed symbolically. This is not at all the same undertaking. And though we did the first part, only others are going to be able to do the second.23 We are the others. Tasked with the (un)fortunate task of ending White hyper-realism, the White World, and White Being. Well aware that if White Fascism continues the project of black annihilation, the only choice we will have is to fight. Not because we want to, but because we have to. But, ultimately, we must remember the words of Huey Newton: “[T]he first lesson a revolutionary must learn is that he is a doomed man.” In the age of Trump, the perfection of slavery reaches its horizon.25** The disavowal of the lives of refugees is White Being attempting to reconcile the “Nation- State” simulation with the free track and flow of bodies it’s been attempting to murder; the deportation of undocumented immigrants in conjunction with the materialization of borders is White Being attempting to secure its linguistic and economic integrity; the rise of the private prison and the militarization of the police force is White Being attempting to innovate the system of enslavement and necropolitics for the 21st Century; the plundering of indigenous land and bodies is White Being attempting to finish off the project of genocide; the disregard for the Earth is White Being ensuring the Anthropocene will also be the Apocalypse. **Trump is a reinvigoration, a call to arms, for White Being, and White Being can only be “destroyed symbolically.” Black terrorism transfigures the symbolic stakes because** it steals **away that condition of White Being’s possibility in a kind of fugitivity that is a zero-transformation into Blackness. This being said, we all know that the only thing that follows the absolute loss of hope is this Black Spring, this Neo-Fanonian violence, this blackened terroristic situational** transfer. In Baudrillard’s words, in the Age of Trump, let us remember the gift of immorality, “Terrorism is immoral. The World Trade Center event, that symbolic challenge, is immoral, and it is a response to a globalization which is itself immoral. So, let us be immoral...”26

#### Their 1AC card agrees that one must embrace the position of the socially dead subject, take this dance with black death, I mean they asked you to

\*KENTUCKY BLUE\*

Mari 1AC Matsuda 88, Associate Professor of Law at the University of Hawaii, 1988, “When the First Quail Calls: Multiple Consciousness as Jurisprudential Method”, Women’s Rights Law Reporter, Vol. 11, Issue 7

The multiple consciousness I urge lawyers to attain is not a random ability to see all points of view, but a deliberate choice to see the world from the standpoint of the oppressed. That world is ac- cessible to all of us. We should know it in its con- crete particulars. We should know of our sister carrying buckets of water up five flights of stairs in a welfare hotel, our sister trembling at 3 a.m. in a shelter for battered women, our sisters holding bloodied children in their arms in Cape Town, on the West Bank, and in Nicaragua. The jurispru- dence of outsiders teaches that these details and the emotions they evoke are relevant and impor- tant as we set out on the road to justice. These details are accessible to all of us, of all genders and colors. We can choose to know the lives of others by reading, studying, listening, and ventur- ing into different places. For lawyers, our pro bono work may be the most effective means of ac- quiring a broader consciousness of oppression. Abstraction and detachment are ways out of the discomfort of direct confrontation with the ugliness of oppression. Abstraction, criticized by both feminists and scholars of color, is the, method that allows theorists to discuss liberty, property, and rights in the aspirational mode of liberalism with no connection to what those con- cepts mean in real people's lives. Much in our mainstream intellectual training values abstrac- tion and denigrates nitty-gritty detail. Holding on to a multiple consciousness will allow us to op- erate both within the abstractions of standard ju- risprudential discourse, and within the details of our own special knowledge. Whisperings at Yale and elsewhere about how deconstructionist heroes were closet fascists remind me of how important it is to stay close to oppressed communities. High talk about lan- guage, meaning, sign, process, and law can mask racist and sexist ugliness if we never stop to ask: "Exactly what are you talking about and what is the implication of what you are saying for my sis- ter who is carrying buckets of water up five flights of stairs in a welfare hotel? What do you propose to do for her today, not in some abstract future you are creating in your mind?" If you have been made to feel, as I have, that such inquiry is theo- retically unsophisticated, and quaintly naive, re- sist! Read what Professor Williams, Professor Scales-Trent, and other feminists and people of color are writing.' The reality and detail of op- pression are a starting point for these writers as they enter into mainstream debates about law and theory.

### 1nc – paradox

#### The United States federal government should prohibit business firms.

#### The counterplan text is false and so is this statement.

#### The prior statement is true.

#### Vote negative to embrace the paradox of life

Robert Wright 17, 08-08-2017, "Why Buddhism Is True: The Science and Philosophy of Meditation and Enlightenment," No Publication, https://1lib.us/book/2822976/d6e4f7

This sort of readjustment of attention, by the way, is a perfectly fine thing to do. In mindfulness meditation as it’s typically taught, the point of focusing on your breath isn’t just to focus on your breath. It’s to stabilize your mind, to free it of its normal preoccupations so you can observe things that are happening in a clear, unhurried, less reactive way. And “things that are happening” emphatically includes things happening inside your mind. Feelings arise within you—sadness, anxiety, annoyance, relief, joy—and you try to experience them from a different vantage point than is usual, neither clinging to the good feelings nor running away from the bad ones, but rather just experiencing them straightforwardly and observing them. This altered perspective can be the beginning of a fundamental and enduring change in your relationship to your feelings; you can, if all goes well, cease to be their slave.  After devoting some attention to the overcaffeinated feeling in my jaw, I suddenly had an angle on my interior life that I’d never had before. I remember thinking something like, “Yes, the grinding sensation is still there—the sensation I typically define as unpleasant. But that sensation is down there in my jaw, and that’s not where I am. I’m up here in my head.” I was no longer identifying with the feeling; I was viewing it objectively, I guess you could say. In the space of a moment it had entirely lost its grip on me. It was a very strange thing to have an unpleasant feeling cease to be unpleasant without really going away. There is a paradox here. (Don’t say I didn’t warn you!) When I first expanded my attention to encompass the obnoxiously intrusive jaw-grinding sensation, this involved relaxing my resistance to the sensation. I was, in a sense, accepting, even embracing a feeling that I had been trying to keep at a distance. But the result of this closer proximity to the feeling was to acquire a kind of distance from it—a certain degree of detachment (or, as some meditation teachers prefer, for somewhat technical reasons, to put it, “nonattachment”). This is something that can happen again and again via meditation: accepting, even embracing, an unpleasant feeling can give you a critical distance from it that winds up diminishing the unpleasantness. In fact, one thing I occasionally do when I’m feeling very sad— and this is something you can experiment with even if you’ve never meditated—is sit down, close my eyes, and study the sadness: accept its presence and just observe how it actually makes me feel. For example, it’s kind of interesting that, though I may not be close to actually crying, the feeling of sadness does have a strong presence right around the parts of my eyes that would get active if I did start crying. I’d never noticed that before meditating on sadness. This careful observation of sadness,  combined with a kind of acceptance of it, does, in my experience, make it less unpleasant. Now, here is a question that is fundamental: Which, if either, of my two perceptions was “truer”—when the feeling felt unpleasant, or when the unpleasantness subsided and the feeling became, for practical purposes, neutral? To put it another way: Was the initial unpleasantness in any sense an illusion? Certainly, by adopting another perspective, I made it disappear—and that’s something that’s often true of what we call illusions: shifting your perspective dispels them. But are there any additional grounds for thinking of it as an illusion? is question goes way beyond my own little episodes of transcending overcaffeination and melancholy. It applies, in principle, to all negative feelings: fears, anxieties, loathing, selfloathing, and more. Imagine if our negative feelings, or at least lots of them, turned out to be illusions, and we could dispel them by just contemplating them from a particular vantage point.

## Case Cards

#### Vote neg on presumption---prohibiting businesses doesn’t break down other causes of consumerism, and the plan isn’t perceived and doesn’t function as a destruction of capitalism---means they have no offense

#### Black abjection is the root cause of capitalism---AND fungibility shapes contemporary markets so it controls the case

Hardin & Towns 19, \*Carolyn, Assistant Professor of Media and Communication & American Studies @ Miami University. \*\*Armond R., Department of Communication Studies @ The University of North Carolina at Chapel Hill. (December 2019, “Plastic Empowerment: Financial Literacy and Black Economic Life”, *American Quarterly*, Volume 71, Number 4, pg. 980-981)

W. E. B. Du Bois suggested the white worker’s choice and the black slave’s absence of choice were important components of the capitalistic distinction between blackness and whiteness. Du Bois argued white workers always held out hope that “they themselves might also become planters by saving money, by investment, by the power of good luck.”71 Black slaves come into existence not as exploited, which is to say “free” to sell their labor (choice), but expropriated in ways that mirror the extraction of natural resources.72 Another way to say this is that the slave, much like the tree or cattle, for Frank Wilderson,73 is the ground on which human capitalist exploitation stands. Julia Ott’s comprehensive review of research on slave capital bears this out: the transatlantic slave trade and slave-based Southern US commodity production created modern capitalism, financing transformations in technology, industry, and economy more thoroughly than any other capital input.74

Ian Baucom explains the connection between the objecthood of black slave bodies and the economic rationality of finance.75 According to Baucom, it was the transatlantic slave trade that birthed the modern financial calculation of value through insurance on slaves. The value of slave bodies as chattel, which could, if circumstances demanded, be cast overboard from a slave ship facing turbulent seas, was guaranteed in advance for the owners of slave ships by insurance policies. The calculation of the cost of that insurance was a foundational form of what Baucom variously terms “actuarial historicism” or “theoretical realism,” which are forms of rationality that “ground value in the loss of the singular and the invention of the average.”76 In other words, insurance on slave bodies evacuated their singularity more completely even than enslavement, rendering them placeholders of value, which could be converted into paper money either through exchange or through the exercise of an insurance contract once they were cast overboard. For Baucom, the modern credit economy and finance capitalism itself are founded on the reification of speculative values that the insured transatlantic trade in black slaves inaugurated. In his formulation, it is the white slave trader or actuary who can see through the “thingliness” of the objects of slavery to calculate their speculative value, embodying the “speculative culture of finance capital” that has much in common with the economic rationality invoked in the calculation of the abstract cost of “free” checking accounts, despite their very real lived costs for poor customers.77

These dynamics did not end with slavery. The twentieth century is rich with examples of outerdetermined black objecthood within capitalism.78 The 1939 Federal Housing Authority Underwriting Manual that served as both guide and tool for suburbanization in the US not only ratified the practice of “redlining” whereby neighborhoods of black families were drawn out of mortgage lending, but actually directed homeowners to use racial covenants to prevent black people from moving into their neighborhoods.79 Both redlining and racial covenants acted on black homeowners and potential buyers, making them objects to be circumscribed and excluded. They also prevented black people from becoming privileged subjects of the American mortgage boom, which was built and protected for those consumers who fit within the racialized subject position of homo economicus.

#### Talking about capitalism through the lens of antitrust reinforces the notion of race as a commodity

Nancy Leong 13, William M. Beaney Memorial Research Chair, Racial Capitalism, Harvard Law Review Vol 128 No 8 June 2013, https://harvardlawreview.org/wp-content/uploads/pdfs/vol126\_leong.pdf

Broader social harms also flow from racial capitalism. Racial capitalism impoverishes our discourse around race, fosters racial resentment, and ultimately displaces more meaningful antiracism measures. These harms prevent progress toward eliminating racism and inequality.

1. Impoverished Discourse. — “[I]t’s very hard to talk about race . . . when myths, clichés, and bromides have so overrun the discourse . . . .”323

We struggle to have good conversations about race. Commentators have examined this difficulty, both within and outside the academy.324 The news is full of conversations gone bad,325 and many online conversations involving race degenerate into epithets and slurs.326 As a candidate, President Barack Obama called on Americans to have a conversation about race — and some groups responded327 — but it is hard to say whether this symbolic pronouncement and the response to it have advanced our national discourse.

Racial capitalism reinforces the notion that race is a commodity, and in so doing, impoverishes our thought and discourse surrounding race. It infects the way we think about and talk to one another. As Radin explains: “Theories are formed in words. Fact- and valuecommitments are present in the language we use to reason and describe, and they shape our reasoning and description, and . . . reality itself.”328 Commodifying race causes us to think of it as just another thing — like bread or furniture — that we can take, use, consume, exploit, enjoy, and discard as we wish. This way of thinking is funda- mentally at odds with an attitude of respect for racial identity. Rather than inculcating an attitude of respect, commodification precludes it.

An exaggerated thought experiment helps to make clear how the commodification of race affects our thinking and discourse about race. Radin, worrying about a domino effect with respect to the commodification of sex, asks, “What if sex were fully and openly commodified?”329 She invites us to envision a world in which sexual services are advertised pervasively, sexual partners can be ordered through catalogs or at trade shows, and recruitment and training of sex workers is carried out just as corporate headhunting and training is now. She concludes that “[a] change would occur in everyone’s discourse about sex,” such that people would become viewed in differentiatedmarket terms and the ideal of nonmonetized relationships would become lost entirely.330

Yet the alternate world that Radin envisions with respect to the open commodification of sex is not so distant from the world we have now with respect to race. People advertise openly for sexual and romantic partners of particular races; indeed, some websites require users to indicate a racial preference in order to use the site.331 Many people actively seek friends of particular races.332 Schools and employers proclaim their interest in enrolling or hiring a “diverse” group of individuals. In higher education, admissions officers ponder, “How can we get more blacks?” and the question often seems troublingly similar to the question of “How can we get more of those really good ballpoint pens?”

Racial capitalism, and the corresponding desire for racial commodities, continues to influence our thinking and our discourse. The desire for particular racial commodities that the diversity rationale inspires does not reflect worthy feelings about race, such as a desire for respect or inclusion. Instead, it reveals a desire to improve institutional status by increasing the appearance of diversity. Even if the desire for numerical diversity is motivated by a desire for respect or inclusion, these good intentions do not necessarily breed good attitudes about diversity. Rather, the way one goes about pursuing diversity ineluctably affects the way one thinks about diversity — that is, striving for a thin, numerical version of diversity fosters a thin version of respect for inclusion more generally. This desire dehumanizes people of color by strip- ping away their individuality and replacing their personhood with a single detached attribute: their race. Moreover, racial capitalism instantiates the commodification of race, which further impairs our ability to think and converse productively about race. That is, it would augment the exploitation already entrenched by the practices of racial capitalism.

As things now stand, market rhetoric impoverishes our social discourse surrounding race. Couching conversations about race in market rhetoric limits racial discourse to discussions of deriving economic and social value. If a law firm merely wants to hire more people of color so that it can display their pictures on its website and brag about its numerical diversity to its customers, then the firm’s conversation about race halts at hiring. Such a conversation does not allow for examination of the broader historical, experiential, and cultural dimensions of racial identity. The result is a discourse in which only a thin and visible version of racial identity is welcomed; other aspects of individuals’ racial identity are squeezed out and dismissed from view because they lack economic and social significance.

2. Racial Resentment. — “[R]ent-a-Negro.com . . . allows you the chance to promote your connection with a creative, articulate, friendly, attractive, and pleasing African American person. This service comes without the commitment of learning about racism, challenging your own white privilege, or being labeled ‘radical.’”333

Nonwhite people are well aware of attempts to engage in racial capitalism by white individuals and predominantly white institutions. The sheer number of jokes and parodic writings documented here reveal a widespread awareness that racial capitalism occurs in a range of settings

This awareness of white attempts at racial capitalism harms human relationships. Racial capitalism changes the meaning of interactions between individuals. In particular, racial capitalism cheapens cross-racial interaction and attempts at cross-racial understanding. When race is viewed as a commodity, white people are encouraged to think of nonwhite people in terms of their instrumental value, not their intrinsic worth.

The behavior that racial capitalism encourages among white people in turn fosters a pervasive cynicism among people of color, in which all white people are suspected of trying to diversify their friend group or fulfill a racial fetish. Would-be friends might be disingenuous; wouldbe lovers might be thrill-seeking.334 The market for race as a com- modity gives rise to these suspicions, and such suspicions ultimately pose an obstacle to the formation of cross-racial relationships that could dismantle racial barriers.

Moreover, racial capitalism fosters racially offensive behavior by white people. Performance artist damali ayo issues a stinging criticism of white attempts to capitalize on nonwhite identity through her satirical website rent-a-negro.com and her subsequent book entitled How to Rent a Negro. 335 Her point is that blacks have been used by white people throughout history and continue to be used today. She explains: “As we all know, the purchase of African Americans was outlawed many years ago. Now, black people are once again a valued and popular commodity. These days those who boast of black friends and colleagues are on the cutting edge of social and political trends.”336 The implication is clear: commodification breeds resentment, and resentment forecloses reconciliation. Moreover, commodification echoes the attitudes that engendered slavery and Jim Crow, rendering meaningful movement past that history impossible. Ultimately, ayo’s sarcastic use of market rhetoric mocks and makes explicit the commodification, reinforced by racial capitalism, that in fact occurs unironically throughout society.

Importantly, such resentment and cynicism may result even if nonwhite individuals nominally acquiesce to racial capitalism. Let us return to the law firm I have previously described. Suppose that a young Asian lawyer receives an offer of employment from that firm. The hiring partner explicitly tells her that the firm hired her in part because it wishes to improve its “diversity numbers,” and from the moment she begins work at the firm, it imposes identity demands on her ranging from photographing her for promotional materials to assigning her to work on a proposal for an Asian prospective client. The young lawyer may participate in these demands without objection; she may view them as the price of employment at the firm, a job she deeply wants, and may perceive that she will suffer negative repercussions if she objects to the firm’s demands. Nonetheless, the firm’s overt racial capitalism may cause the young lawyer to feel objectified, disenchanted, and alienated. Although the lawyer “consents” to the capitalization of her nonwhiteness in the sense that she continues to work at the firm, the resentment she feels as a result attests to the harm to racial relations the law firm’s behavior has caused.

Capitalization of nonwhiteness thus infuses already-tenuous race relations with inauthenticity, cynicism, and resentment. Whites may view nonwhites as sources of racial capital, or fear that nonwhites will suspect them of racial capitalism. Nonwhites may suspect whites of engaging in racial capitalism, even when there is no such intent. Within this maze of suspicion, the opportunity for genuine improvement in racial relations is often lost.

3. Displaced Reform. — “In the spirit of celebrating diversity at Iowa State University, a black guy was digitally added to the cover of the school’s 2001 spring-semester course catalog, school officials announced Monday.”337

Racial capitalism impedes progress toward racial equality. Given our nation’s history of slavery, the exchange of racial commodities evokes the era in which blacks and Native Americans were enslaved on the basis of race. Indeed, the era of racialized slavery is not yet over: much modern slavery in America still tracks racial fault lines.338 Commodification of race cannot occur without evoking this social meaning. By reminding us of a time when racialized bodies were commodified, the commodification of race makes profound historical inequality a continuing reality.

From a forward-looking perspective, racial capitalism leads to a preoccupation with bare numerical diversity at the expense of more meaningful markers of antidiscrimination progress. Accruing the economically beneficial features of nonwhiteness becomes an end in itself rather than a means to the end of racial equality.

First, preoccupation with numerical diversity often replaces efforts to make meaningful changes in institutional culture. Writing about the workplace, Tristin Green argues that “[t]he problem with work culture from an antidiscrimination perspective . . . is that the process of social interaction is likely to be infected with discriminatory bias, leading to work cultures that are defined and imposed along racial and gender lines.”339 Failure to make changes in work culture, therefore, often means that nonwhite employees will fail to thrive in a particular workplace regardless of whether the workplace has achieved the numerical diversity toward which racial capitalism strives.

Preoccupation with numerical diversity in educational institutions leads to an analogous failing. Colleges and universities across the country are intent on acquiring adequate diversity statistics to report to their boards of trustees, post on their websites, and cite to prospective students. Yet at the same time they may fail to take measures to ensure that nonwhite students integrate into campus life,340 succeed academically, and have access to job opportunities after graduation. Such failings undoubtedly explain much of the disparity between the academic performance of whites and nonwhites, and might likewise help to explain the disparity in bar passage rates between white and nonwhite law graduates.341 The effort — or lack thereof — to reform institutional culture marks the dramatic difference between numerical racial diversity and racial inclusiveness. Yet this focus on numerical diversity provides the foundation for racial capitalism.

Moreover, preoccupation with numerical diversity often preempts a more nuanced understanding of institutional demographics. Within educational institutions, for instance, some admissions offices focus single-mindedly on how many students they can report as falling within the crude categories of “Asian,” “Black,” or “Latino,” while remaining ignorant of more granular disparities within those categories. Among Asians enrolled in colleges and universities, for example, individuals who identify as Chinese, Japanese, and Korean are well represented, but those who identify as Thai, Lao, and Burmese remain underrepresented.342 Among students who identify as black, immigrants from African nations and their children are overrepresented, as are racially mixed individuals, while those who had four grandparents born in the United States are dramatically underrepresented.343 And among those who identify as Latino, those of Mexican and Puerto Rican descent are often underrepresented in educational settings.344

Surely numerical diversity is a prerequisite for accomplishing antidiscrimination goals of equality and just distribution of social goods. But numerical diversity is insufficient: institutions must also make efforts to integrate their constituencies and foster good racial relations. Racial capitalism interferes with this ideal version of inclusive thinking because its goals are achieved when a nonwhite student matriculates or a nonwhite employee is hired. In other words, racial capitalism leads only to the question of “how many of them can we count?” while bypassing the more important question of “how can we include everyone who is here?” Racial capitalism thus fails to foster robust inclusive measures. Indeed, it diverts attention away from them.

One might argue that even if white individuals and institutions engage in racial capitalism for reasons we find objectionable, there may be desirable collateral consequences to such capitalism. Suppose, for instance, that a company’s management seeks out nonwhite employees for precisely the worst reasons: they wish only to shield the company from litigation and to capture the image of the nonwhite employees in promotional materials featured on the company’s website and printed literature. Nonetheless, the company’s motivations lead it to take actions that result in a more diverse workforce, and perhaps even to place nonwhite individuals in prominent and powerful positions within the company.345 We might hypothesize that, in the aggregate, the greater presence and influence of nonwhite individuals in the company’s work force will lead to changes in the workplace culture, ultimately making it more inclusive and more congenial for individuals of all races.346

But as a general matter, the presence of minorities alone seems unlikely to trigger reform. Changing workplace culture is a complicated endeavor and is difficult to undertake successfully even with strong institutional support.347 An institution interested in nonwhiteness only as capital is unlikely to provide that support. And so I am skeptical that the bare presence of nonwhite individuals in incrementally greater numbers will result in widespread change to workplace culture.348

#### COVID crushed employer leverage.

Ro 7-31-2021, reporter @ Axios. (Sam, "1 big thing: The worker's job market", *Axios*, https://www.axios.com/workers-job-market-openings-hirings-firings-quits-wages-62461df6-116c-4b0c-8c8d-b0a22e53f7ba.html)

The unprecedented upheaval of a year-plus of pandemic life is playing out in the job market. Why it matters: The unemployment rate remains stubbornly high. At the same time, the Great Resignation has companies across the country trying desperately to hold on to staff as employees act on pent-up demand for job changes. The pandemic also led some people to relocate, and to rethink their careers and what they want out of life — contributing to a mismatch of available jobs to available workers. The result? Chaos. By the numbers: There are 6.7 million fewer Americans working now than there were before the pandemic. The unemployment rate is 5.9%, compared to 3.5% in February 2020. On the plus side, about 16 million net jobs have been filled since April 2020. Four metrics from the Bureau of Labor Statistics’ Job Openings and Labor Turnover Survey help paint the picture. Job openings are at a record high of 9.2 million. For every one opening, there is one unemployed American. This is a considerable improvement from April 2020 when there were five unemployed per opening. In response, businesses across all industries have been raising wages. A growing percentage of companies are advertising hiring incentives like cash signing bonuses. Hirings aren't even close to keeping pace with new job openings. In May, the ratio of hires to job openings fell to an all-time low of 0.64. Numerous factors are holding workers back, including concerns about the coronavirus, child care issues, comfortable financial safety nets, and the enhanced unemployment benefits that are currently rolling off on a state-by-state basis. There are also an estimated 1.7 million people who retired early during the pandemic. Layoffs and firings are at an all-time low. The more that companies struggle to hire, the less they are letting go of the workers they do have. In fact, it may be the case that workers are underestimating how much leverage they have with their employers. Quits are at record highs as workers seek out better opportunities. The share of departing workers (layoffs, firings, retirements, deaths) who quit is 67.8%, the second-highest ever. Quit rates are particularly high in lower-wage service jobs like those in the leisure and hospitality industries, which likely reflects some trading up to better positions. Between the lines: This optimism toward the labor market may seem to be in conflict with the fact that 9.5 million Americans identify as being unemployed. Federal Reserve Chair Jerome Powell addressed the topic during a press conference on Wednesday. Few people follow the labor market as closely as Powell, since one of the Fed's jobs is to help the economy achieve maximum employment. He said the real-world process for securing a job is a "time intensive, labor intensive process, and there may be a bit of a speed limit on that." The big picture: The balance of power in the labor market is unusually slanted in favor of workers, who are asking for raises, who are getting poached by competitors, who are switching careers, and in many cases who are just leaving the labor force altogether. The bottom line: The labor market wouldn’t be this favorable for workers if not for an economy that’s growing at such a high clip that there are shortages. As companies increasingly hire and continue to raise wages, that’s more money in the pockets of consumers who can spend it, perpetuating a virtuous cycle of economic growth.

#### Market concentration can’t explain inequality or wage stagnation, and antitrust won’t solve.

Bivens et al. 18, \*PhD, director of research at the Economic Policy Institute; \*\*PhD, MA, distinguished fellow at EPI; \*\*\*PhD, MSc, EPI’s vice president. (Josh, Lawrence Mishel, and John Schmitt, 4-25-2018, "It’s not just monopoly and monopsony: How market power has affected American wages", *Economic Policy Institute*, https://www.epi.org/publication/its-not-just-monopoly-and-monopsony-how-market-power-has-affected-american-wages/)

This paper highlights some empirical findings from the new literature on the effect of labor and product market concentration on wages. We address three questions about market concentration that have not always been placed front and center in this literature. The first question is, “Does concentration adversely affect wages at a point in time?” The second question is, “Has concentration grown over time?” The third question is, “Can growing concentration by itself explain a significant portion of the change in wage trends in recent decades?” We find there is evidence to answer “yes” to the first and second questions but not the third. To be clear, the failure to answer affirmatively to the third question is not a criticism of these studies. The studies are not claiming that rising concentration alone can explain wage stagnation or inequality. Yet too many readers have taken these studies’ findings to this conclusion.

Finally, this paper makes two broader points about market power. First, market concentration is not the only source of power—particularly employer power—in markets. Second, even unchanged employer power (like that conferred by market concentration) can play a role in growing wage suppression and inequality if it is accompanied by a collapse of workers’ market power. The new literature on market concentration tells us a lot about employer power, but further exploration of what has happened to workers’ market power remains a key research agenda.

This paper highlights the need to tackle sluggish wage growth and rising inequality with a broad menu of policy interventions that go beyond those provided by competitive models to focus on employer and worker power, and even beyond the antitrust agenda suggested by focusing exclusively on market concentration.

Following are our key conclusions:

Labor market concentration is negatively correlated with wages, but the scope of its downward pressure on wages is limited.

New research shows that labor market concentration is negatively correlated with wages. However, the effect of labor market concentration is comparatively modest when scaled against what we consider the most significant wage trend in recent decades: the growing gap between typical (median) workers’ pay and productivity.

The new literature on market concentration has not yet provided concrete empirical estimates of a key labor market trend of recent decades—rising compensation inequality. This should be a priority for this research agenda in the future.

The new concentration literature does allow us to estimate the effect of market concentration on the share of overall income claimed by labor compensation. These estimates suggest that concentration has not risen enough, nor is its effect on labor’s share of income strong enough, to account by itself for an economically important share of the divergence between economywide productivity and the typical worker’s pay in recent decades.

The new research on labor market concentration implies that this concentration reduced wage growth by roughly 0.03 percent annually between 1979 and 2014, a decline that would explain about 3.5 percent of the total divergence

between the median worker’s pay and economywide productivity over the same period.

One important study shows that the “average” labor market is “highly concentrated.” But differences between measures of concentration of the average labor market and the labor market experienced by the average worker have important implications for how to assess the impact of labor market concentration on long-term wage trends. In other words, many labor markets suffer from high degrees of concentration, but most people work in labor markets with only low-to-moderate degrees of concentration.

Nonetheless, labor market concentration is a particular challenge for rural areas and small cities and towns. This is an important finding for those looking to provide economic help to residents of those areas.

#### Antitrust interventions don’t instigate movements---they coopt them.

Crane 18, the Frederick Paul Furth, Sr. Professor of Law, University of Michigan. (Daniel A., 9-27-2018, “Antitrust’s Unconventional Politics,” *Virginia Law Review*, Vol. 104, https://www.virginialawreview.org/articles/antitrusts-unconventional-politics/)

A final reason that the politics of antitrust sometimes confound conventional left–right divides has to do with the pragmatic sense that some regulatory interventions may be necessary to preserve capitalism politically, and that antitrust may be the least objectionable one. This “antitrust or else” perspective has characterized the politics of antitrust from the beginning.

The conventional view that Congress intended the Sherman Act to seriously undermine the trusts is balderdash. According to Professor Merle Fainsod and Lincoln Gordon of Harvard University, “[T]he Republican Party, in control of the 51st Congress, was ‘itself dominated at the time by many of the very industrial magnates most vulnerable to real antitrust legislation.’”[87] A more realistic view is that the 51st Congress passed the Sherman Act to avert more radical reforms. Speaking on the Senate floor in 1890, Senator John Sherman warned his brethren, many of whom were controlled by the trusts, that Congress “must heed [the public’s] appeal or be ready for the socialist, the communist, and the nihilist.”[88] Sherman thus conceived of his eponymous antitrust statute as politically necessary to diffuse more radical political movements—as a sort of Band-Aid on capitalism.

The idea that antitrust legislation and enforcement are necessary accommodations to public demand has a long pedigree in both conservative and more progressive circles. Writing in 1914, William Howard Taft described the Sherman Act as “a step taken by Congress to meet what the public had found to be a growing and intolerable evil.”[89] Notably, Taft did not own the public’s concern himself, nor did he attribute such a concern to Congress. Similarly, Theodore Roosevelt was relatively unconcerned with the trusts personally, but he “saw the trust problem as something that must be dealt with on the political level; public concern about it was too urgent to be ignored [90]

Beyond the concern that, absent antitrust, capitalism itself might succumb to reformist pressures, there is a more modest possibility that, absent antitrust, political pressures would lead to overregulation. Antitrust and administrative regulation are conventionally viewed as alternatives to address market failures. From the Reagan Administration to the Financial Crisis of 2008, the overall arc of American law involved simultaneous deregulation and relaxation of antitrust enforcement. If popular dissatisfaction with the economic status quo grows, demand might grow to pull either the regulatory or antitrust lever. Those ideologically committed to a light governmental hand on the market might prefer the antitrust alternative.

It is hard to judge at any given moment how much political support for antitrust intervention is motivated by genuine concern over monopoly and competition, and how much of it derives from the fact that, in the face of popular demand for a governmental cure to a perceived evil, it is often easier to delegate the solution to antitrust than to propose a regulatory solution. From the Sherman Act forward, however, it is certain that antitrust has often been deployed as a foil to more interventionist forms of regulation. The ideological and political implications of that move are complex and not neatly housed in left–right categories.

Conclusion

Antitrust is back on the menu. Given the ebb-and-flow patterns of antitrust enforcement in American history, that should come as no surprise. Nor should it be surprising that the pressures for enhanced antitrust enforcement are coming from both wings of the political spectrum, as is the defense of the incumbent consumer welfare regime. Despite the appearance of a conventional left–right divide over antitrust enforcement since the 1970s, in broader historical perspective the ideological lines over monopoly and competition are far less determined.

#### Courts circumvent.

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

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions. But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well. No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area. Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades. But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up. Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it.

If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench. Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power. Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing. And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017. Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench. Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system. There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.