## T

#### The role of the ballot is to determine the desirability of topical action:

#### The Aff violates this:

#### “USFG should” means the debate is solely about a policy established by governmental means

Ericson 3 – Jon M. Ericson, Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., The Debater’s Guide, Third Edition, p. 4

The Proposition of Policy: Urging Future Action In policy propositions, each topic contains certain key elements, although they have slightly different functions from comparable elements of value-oriented propositions. 1. An agent doing the acting – “The United States” in “The United States should adopt a policy of free trade.” Like the object of evaluation in a proposition of value, the agent is the subject of the sentence. 2. The verb *should*—the first part of a verb phrase that urges action. 3. An action verb to follow *should* in the *should*-verb combination. For example, *should adopt* here means to put a program or policy into action though governmental means. 4. A specification of directions or a limitation of the action desired. The phrase *free trade*, for example, gives direction and limits to the topic, which would, for example, eliminate consideration of increasing tariffs, discussing diplomatic recognition, or discussing interstate commerce. Propositions of policy deal with future action. Nothing has yet occurred. The entire debate is about whether something ought to occur. What you agree to do, then, when you accept the *affirmative side* in such a debate is to offer sufficient and compelling reasons for an audience to perform the future action that you propose.

#### Expanding requires a reversal of legislative intent

Garubo 84 --- Angelo G. Garubo, Senior Vice President and Corporate Secretary, Commercial Credit Group, Juris Doctor, magna cum laude, from California Western School of Law, “Severing the Legislativ ering the Legislative Veto Provision: The Aftermath of Chada vision: The Aftermath of Chada”, California Western law Review, Vol 21 No 1, 1984, https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1559&context=cwlr

Since a veto provision can qualify as a proviso, the rule in Davis v. Wallace 147 and Frost v. Corporation Commission 148 can be applied to show that the legislative intent test is inadequate to determine if a veto provision should be severed. In Davis and Frost, the Supreme Court ruled that a proviso could not be severed if it was originally written into the statute. 149 The Court reasoned that severing such a provision would result in an extension of the scope of the statute.' 50 Such an extension would be contrary to the legislative intent of a statute by including subject matter which the legislature expressly chose to exclude.151 The Davis and Frost analysis can be applied to the "congressional veto" because (1) the veto provision can be considered a proviso 152 and (2) severing a veto provision will expand the scope of the statute contrary to legislative intent. 5 3 By severing a veto provision the executive branch would be free to expand or limit the scope of a statute through its implementation. Such an expansion or limitation would constitute a defacto contradiction of legislative intent by altering the purview of the statute.' 54 A veto provision is a control mechanism.' 55 Its mere presence in a statute indicates the legislature's desire to restrict the scope of that statute. 5 6 By removing it, the court would affect a fundamental change in the nature of the statute, which was not accounted for when the legislature enacted the law. 157 Because a veto provision is a proviso, its excise from a statute would contradict legislative intent. A test which uses legislative intent to determine if a veto provision is severable could only find that the provision is not severable. Thus, when literally applied, the legislative intent test is not adequate to determine if a veto provision should be severed from its statutory framework.

#### Vote neg:

#### First - predictable limits---allowing the aff to pick any grounds for debate makes engagement impossible by skirting a predictable starting point and undermining preparation and research. Radical aff choice shifts the grounds for the debate and puts the aff far ahead: they have incentives to cement their infinite prep by selecting the most one-sided ideas and can choose only orientations toward the word, not praxis with an actor or mechanism. Fairness is an intrinsic good, vital to the practice of debate, and logically prior to deciding any other argument.

#### Second- our Testing warrant:

**Operating within negotiated statis maximizes in-depth discussions for both teams and the judging community. An in-depth iterative process creates a broader model that moves second and third line strategies from theoretically feasible to practical. Neg responses. Some will be effective, some won’t – but the process alone shifts incentive structures towards more on-point and in-depth approaches. This does not require the Aff argue within a narrow horizon of problem or solution areas – but does work within stasis and prevents the Neg from abandoning the wisdom in-depth case hits. After all, nothing in their model prevents Aff from shifting to 1AC that solely claim “bigotry is bad” or “I think that bigot is bigoted”. Our model better aligns incentive structures for Neg research on critical and cultural theory – improving the depth of every participant’s knowledge on the very subject matter the Aff contends is vital for education.**

#### A well-defined resolution is critical to allow an iterative process of argument testing and improvement---this does not require particular forms of argument, but does require a common point of disagreement.

Poscher ‘16

Director at the Institute for Staatswissenschaft and Philosophy of Law at the University of Freiburg (Ralf, “Why We Argue About the Law: An Agonistic Account of Legal Disagreement”, Metaphilosophy of Law, Tomasz Gizbert-Studnicki/Adam Dyrda/Pawel Banas (eds.), Hart Publishing, forthcoming. Modified for language that may offend)

Hegel’s dialectical thinking powerfully exploits the idea of negation. It is a central feature of spirit and consciousness that they have the power to negate. The spirit “is this power only by looking the negative in the face and tarrying with it. This […] is the magical power that converts it into being.”102 The tarrying with the negative is part of what Hegel calls the “labour of the negative”103. In a loose reference to this Hegelian notion Gerald Postema points to yet another feature of disagreements as a necessary ingredient of the process of practical reasoning. Only if our reasoning is exposed to contrary arguments can we test its merits. We must go through the “labor of the negative” to have trust in our deliberative processes.104

This also holds where we seem to be in agreement. Agreement without exposure to disagreement can be deceptive in various ways. The first phenomenon Postema draws attention to is the group polarization effect. When a group of like‐minded people deliberates an issue, informational and reputational cascades produce more extreme views in the process of their deliberations.105 The polarization and biases that are well documented for such groups106 can be countered at least in some settings by the inclusion of dissenting voices. In these scenarios, disagreement can be a cure for dysfunctional deliberative polarization and biases.107 A second deliberative dysfunction mitigated by disagreement is superficial agreement, which can even be manipulatively used in the sense of a “presumptuous ‘We’”108. Disagreement can help to police such distortions of deliberative processes by challenging superficial agreements. Disagreements may thus signal that a deliberative process is not contaminated with dysfunctional agreements stemming from polarization or superficiality. Protecting our discourse against such contaminations is valuable even if we do not come to terms. Each of the opposing positions will profit from the catharsis it received “by looking the negative in the face and tarrying with it”.

These advantages of disagreement in collective deliberations are mirrored on the individual level. Even if the probability of reaching a consensus with our opponents is very low from the beginning, as might be the case in deeply entrenched conflicts, entering into an exchange of arguments can still serve to test and improve our position. We have to do the “labor of the negative” for ourselves. Even if we cannot come up with a line of argument that coheres well with everybody else’s beliefs, attitudes and dispositions, we can still come up with a line of argument that achieves this goal for our own personal beliefs, attitudes and dispositions. To provide ourselves with the most coherent system of our own beliefs, attitudes and dispositions is – at least in important issues – an aspect of personal integrity – to borrow one of Dworkin’s favorite expressions for a less aspirational idea.

In hard cases we must – in some way – lay out the argument for ourselves to figure out what we believe to be the right answer. We might not know what we believe ourselves in questions of abortion, the death penalty, torture, and stem cell research, until we have developed a line of argument against the background of our subjective beliefs, attitudes and dispositions. In these cases it might be rational to discuss the issue with someone unlikely to share some of our more fundamental convictions or who opposes the (perspective) ~~view~~ towards which we lean. This might even be the most helpful way of corroborating a view, because we know that our adversary is much more motivated to find a potential flaw in our argument than someone with whom we know we are in agreement. It might be more helpful to discuss a liberal position with Scalia than with Breyer if we want to make sure that we have not overlooked some counter‐argument to our case.

It would be too narrow an understanding of our practice of legal disagreement and argumentation if we restricted its purpose to persuading an adversary in the case at hand and inferred from this narrow understanding the irrationality of argumentation in hard cases, in which we know beforehand that we will not be able to persuade. Rational argumentation is a much more complex practice in a more complex social framework. Argumentation with an adversary can have purposes beyond persuading him: to test one’s own convictions, to engage our opponent in inferential commitments and to persuade third parties are only some of these; to rally our troops or express our convictions might be others. To make our peace with Kant we could say that “there must be a hope of coming to terms” with someone though not necessarily with our opponent, but maybe only a third party or even just ourselves and not necessarily only on the issue at hand, but maybe through inferential commitments in a different arena.

f) The Advantage Over Non‐Argumentative Alternatives

It goes without saying that in real world legal disagreements, all of the reasons listed above usually play in concert and will typically hold true to different degrees relative to different participants in the debate: There will be some participants for whom our hope of coming to terms might still be justified and others for whom only some of the other reasons hold and some for whom it is a mixture of all of the reasons in shifting degrees as our disagreements evolve. It is also apparent that, with the exception of the first reason, the rationality of our disagreements is of a secondary nature. The rational does not lie in the discovery of a single right answer to the topic of debate, since in hard cases there are no single right answers. Instead, our disagreements are instrumental to rationales which lie beyond the topic at hand, like the exploration of our communalities or of our inferential commitments. Since these reasons are of this secondary nature, they must stand up to alternative ways of settling irreconcilable disagreements that have other secondary reasons in their favor – like swiftness of decision making or using fewer resources. Why does our legal practice require lengthy arguments and discursive efforts even in appellate or supreme court cases of irreconcilable legal disagreements? The closure has to come by some non‐argumentative mean and courts have always relied on them. For the medieval courts of the Germanic tradition it is bequeathed that judges had to fight it out literally if they disagreed on a question of law – though the king allowed them to pick surrogate fighters.109 It is understandable that the process of civilization has led us to non‐violent non‐ argumentative means to determine the law. But what was wrong with District Judge Currin of Umatilla County in Oregon, who – in his late days – decided inconclusive traffic violations by publicly flipping a coin?110 If we are counting heads at the end of our lengthy argumentative proceedings anyway, why not decide hard cases by gut voting at the outset and spare everybody the cost of developing elaborate arguments on questions, where there is not fact of the matter to be discovered?

One reason lies in the mixed nature of our reasons in actual legal disagreements. The different second order reasons can be held apart analytically, but not in real life cases. The hope of coming to terms will often play a role at least for some time relative to some participants in the debate. A second reason is that the objectives listed above could not be achieved by a non‐argumentative procedure. Flipping a coin, throwing dice or taking a gut vote would not help us to explore our communalities or our inferential commitments nor help to scrutinize the positions in play. A third reason is the overall rational aspiration of the law that Dworkin relates to in his integrity account111. In a justificatory sense112 the law aspires to give a coherent account of itself – even if it is not the only right one – required by equal respect under conditions of normative disagreement.113 Combining legal argumentation with the non‐argumentative decision‐ making procedure of counting reasoned opinions serves the coherence aspiration of the law in at least two ways: First, the labor of the negative reduces the chances that constructions of the law that have major flaws or inconsistencies built into the arguments supporting them will prevail. Second, since every position must be a reasoned one within the given framework of the law, it must be one that somehow fits into the overall structure of the law along coherent lines. It thus protects against incoherent “checkerboard” treatments114 of hard cases. It is the combination of reasoned disagreement and the non‐rational decision‐making mechanism of counting reasoned opinions that provides for both in hard cases: a decision and one – of multiple possible – coherent constructions of the law. Pure non‐rational procedures – like flipping a coin – would only provide for the decision part. Pure argumentative procedures – which are not geared towards a decision procedure – would undercut the incentive structure of our agonistic disagreements.115 In the face of unresolvable disagreements endless debates would seem an idle enterprise. That the debates are about winning or losing helps to keep the participants engaged. That the decision depends on counting reasoned opinions guarantees that the engagement focuses on rational argumentation. No plain non‐argumentative procedure would achieve this result. If the judges were to flip a coin at the end of the trial in hard cases, there would be little incentive to engage in an exchange of arguments. It is specifically the count of reasoned opinions which provides for rational scrutiny in our legal disagreements and thus contributes to the rationales discussed above.

2. THE SEMANTICS OF AGONISTIC DISAGREEMENTS

The agonistic account does not presuppose a fact of the matter, it is not accompanied by an ontological commitment, and the question of how the fact of the matter could be known to us is not even raised. Thus the agonistic account of legal disagreement is not confronted with the metaphysical or epistemological questions that plague one‐right‐answer theories in particular. However, it must still come up with a semantics that explains in what sense we disagree about the same issue and are not just talking at cross purposes.

In a series of articles David Plunkett and Tim Sundell have reconstructed legal disagreements in semantic terms as metalinguistic negotiations on the usage of a term that at the center of a hard case like “cruel and unusual punishment” in a death‐penalty case.116 Even though the different sides in the debate define the term differently, they are not talking past each other, since they are engaged in a metalinguistic negotiation on the use of the same term. The metalinguistic negotiation on the use of the term serves as a semantic anchor for a disagreement on the substantive issues connected with the term because of its functional role in the law. The “cruel and unusual punishment”‐clause thus serves to argue about the permissibility of the death penalty. This account, however only provides a very superficial semantic commonality. But the commonality between the participants of a legal disagreement go deeper than a discussion whether the term “bank” should in future only to be used for financial institutions, which fulfills every criteria for semantic negotiations that Plunkett and Sundell propose. Unlike in mere semantic negotiations, like the on the disambiguation of the term “bank”, there is also some kind of identity of the substantive issues at stake in legal disagreements.

A promising route to capture this aspect of legal disagreements might be offered by recent semantic approaches that try to accommodate the externalist challenges of realist semantics,117 which inspire one‐right‐answer theorists like Moore or David Brink. Neo‐ descriptivist and two‐valued semantics provide for the theoretical or interpretive element of realist semantics without having to commit to the ontological positions of traditional externalism. In a sense they offer externalist semantics with no ontological strings attached.

The less controversial aspect of the externalist picture of meaning developed in neo‐ descriptivist and two‐valued semantics can be found in the deferential structure that our meaning‐providing intentions often encompass.118 In the case of natural kinds, speakers defer to the expertise of chemists when they employ natural kind terms like gold or water. If a speaker orders someone to buy $ 10,000 worth of gold as a safe investment, he might not know the exact atomic structure of the chemical element 79. In cases of doubt, though, he would insist that he meant to buy only stuff that chemical experts – or the markets for that matter – qualify as gold. The deferential element in the speaker’s intentions provides for the specific externalist element of the semantics.

In the case of the law, the meaning‐providing intentions connected to the provisions of the law can be understood to defer in a similar manner to the best overall theory or interpretation of the legal materials. Against the background of such a semantic framework the conceptual unity of a linguistic practice is not ratified by the existence of a single best answer, but by the unity of the interpretive effort that extends to legal materials and legal practices that have sufficient overlap119 – be it only in a historical perspective120. The fulcrum of disagreement that Dworkin sees in the existence of a single right answer121 does not lie in its existence, but in the communality of the effort – if only on the basis of an overlapping common ground of legal materials, accepted practices, experiences and dispositions. As two athletes are engaged in the same contest when they follow the same rules, share the same concept of winning and losing and act in the same context, but follow very different styles of e.g. wrestling, boxing, swimming etc. They are in the same contest, even if there is no single best style in which to wrestle, box or swim. Each, however, is engaged in developing the best style to win against their opponent, just as two lawyers try to develop the best argument to convince a bench of judges.122 Within such a semantic framework even people with radically opposing views about the application of an expression can still share a concept, in that they are engaged in the same process of theorizing over roughly the same legal materials and practices. Semantic frameworks along these lines allow for adamant disagreements without abandoning the idea that people are ~~talking about~~ (discussing) the same concept. An agonistic account of legal disagreement can build on such a semantic framework, which can explain in what sense lawyers, judges and scholars engaged in agonistic disagreements are not talking past each other. They are engaged in developing the best interpretation of roughly the same legal materials, albeit against the background of diverging beliefs, attitudes and dispositions that lead them to divergent conclusions in hard cases. Despite the divergent conclusions, semantic unity is provided by the largely overlapping legal materials that form the basis for their disagreement. Such a semantic collapses only when we lack a sufficient overlap in the materials. To use an example of Michael Moore’s: If we wanted to debate whether a certain work of art was “just”, we share neither paradigms nor a tradition of applying the concept of justice to art such as to engage in an intelligible controversy.

## Frames

**Next Off – Frame Subtraction:**

#### First – our links:

**The Aff deploys the term “settlers”. Many indigenous struggle with the phrase because no one “settled”. Reject what the terminology conveyed about indigenous resistance and ancestry.**

**Johansen ‘7**

BRUCE ELLIOTT JOHANSEN is Robert T. Reilly Professor of Communication and Coordinator of the Native American Studies Program at the University of Nebraska at Omaha. He was a member of Leonard Peltier’s first defense committee during the late 1970s, in Seattle. He was also on hand for fishing-rights activities and battle in Puget Sound in the same decade. Johansen’s earliest book was: “Wasi’chu: The Continuing Indian Wars” – a work that took him to Wounded Knee to investigate the rape and murder of a teenage girl during the protest and siege. This card is from the book – The Praeger Handbook on Contemporary Issues in Native America: Linguistic, Ethnic, and Economic Revival, Volume 1 (Native America: Yesterday and Today) – p. xii

Language has meaning, although we often speak as a mailer of assumption without forethought. Consciously or not, our words frame our beliefs. Some of these words justify the taking of a continent, but they are used so easily and so often that they roll off our tongues with very little forethought. Observant readers will find some words generally absent from this work. Except in direct quotations, for example, I avoid using the word settler, as a generic term for peoples who arrived from afar (usually, but not always, from Europe) to occupy land that had been utilized, sometimes for many thousands of years, by Native peoples. **I find the word** connotatively loaded not for what it says but for what it implies. Left unspoken is an assumption that the Native peoples whom the so-called settlers replaced themselves had no established homelands and that, by the lights of Anglo-American real estate law (of eminent domain and highest and best use), the new residents were making better use of the land and its resources. In the law, as anyone who has owned property that has been subject to eminent domain realizes, such use makes replacement legally defensible. In matter of historical fact, most Native nations had identifiable territorial limits, even if individuals often did not own real estate in the European fashion. Their land often was utilized as well (even if not generally with the same population density) as it was following usurpation by the so-called settlers. I may use the national affiliation (British, say) of the new residents, or the word Immigrants. If I am in a postcolonial mood and do not mind drawing some right-wing flak, I may use—even if I try to avoid—invaders, which places the connotative shoe on the other foot. The shoe often fits, however, and I use the term under those conditions.

#### Our Alt: We can defend the rest of their advocacy and negate only certain parts. 2NR consolidation is the best alt:

#### One – – Praxis: our model teaches a form of engagement that corrects flaws in political strategies. Rejecting our approach is normatively worse for the Aff’s own cause.

Williams ‘15

Douglas Williams is a third-generation organizer, He earned his BA in Political Science at the University of Minnesota at Morris and his MPA at the University of Missouri Columbia, where he was also a Thurgood Marshall Fellow and a Stanley Botner Fellow. He is currently a doctoral student in political science at Wayne State University in Detroit, where his research centers around public policy as it relates to disadvantaged communities and the labor movement. From the article: “The Dead End of Identity Politics” - From: The South Lawn - March 10, 2015 – Internally quoting Freddie DeBoer, Lecturer, Purdue University. DeBoer holds a PhD in Rhetoric and Composition from Purdue and an MA in English, concentration in Writing and Rhetoric from The University of Rhode Island, Modified for potentially objectionable language. In one instance a capital “B” was adjusted to a lower case “b” in a manner that boosted readability, but did not alter context. https://thesouthlawn.org/2015/03/10/the-dead-end-of-identity-politics/

Freddie DeBoer makes a great point in his piece on what he calls “critique drift“: “This all largely descends from a related condition: many in the broad online left have adopted a norm where being an ally means that you never critique people who are presumed to be speaking from your side, and especially if they are seen as speaking from a position of greater oppression. I understand the need for solidarity, I understand the problem of undermining and derailing, and I recognize why people feel strongly that those who have traditionally been silenced should be given a position of privilege in our conversations. B(b)ut critique drift demonstrates why a healthy, functioning political movement can’t forbid tactical criticism of those with whom you largely agree. Because critical vocabulary and political arguments are common intellectual property which gain or lose power based on their communal use, never criticizing those who misuse them ultimately disarms (hampers) the left. Refusing to say ‘*this* is a real thing, but you are not being fair or helpful in making *that* accusation right now’ alienates potential allies, contributes to the burgeoning backlash against social justice politics, and prevents us from making the most accurate, cogent critique possible.”

----- (Williams is now no longer quoting DeBoer)

Look, I am Black. Also, sometimes, I can be wrong. Those two things are not mutually exclusive, and yet we have gotten to a point where any critique of tactics used by oppressed communities can result in being deemed “sexist/racist/insert oppression here-ist” and cast out of the Social Justice Magic Circle. And listen, maybe that is cool with some folks. Maybe the revolution that so many of these types speak about will simply consist of everyone spontaneously coming to consciousness and there will be no need for coalitions, give-and-take, or contact with people who do not know every word or phrase that these groups use as some sort of litmus test for the unwashed. But for the rest of us who reside in a reality-based world, where every social interaction is not tailored for your idiosyncratic indignations, we know that casting folks out for the tiniest of offenses will lead to a Left that will forever be marginalized and ineffective. I have stated before that the kind of people who put out these lists and engage in the kind of identitarian caterwauling that has become rote copy on the Internet might actually want that, as a world where left-wing activism is made potent and transformative will be one where they cannot simply take comfort in their cocoon of self-righteousness. But damn them when I can turn on my computer and see one Black person after another being gunned down by police. Damn them when we have a president that can sit there with a straight face and speak the words of freedom and liberation while using the power at his disposal to deny those very concepts to others. And damn them when we can get thousands of words on Patricia Arquette drunk at a party or how it is privileged to not like the same musicians that they do, but we cannot seem to get any thoughts on how the biggest moment for communities of color since the 1960s is being squandered in a hail of intergenerational squabbling. And do not even get me started on people writing articles that malign long-standing activist organizations without a whiff of evidence that there has been any wrongdoing on their part.

#### Two – no formal plan means any part of the 1AC can become the nexus question by the 2AR, we should reciprocally get to conditionally critique their frames and narrow the debate to parts of disagreement by the 2NR.

#### Three – contingent agreement is good: negating the whole aff makes only the most extreme Neg positions strategic, like prejudice is good. We should debate framing strategies rather than impact turns to injustice

#### Four – its fair: frame subtraction auto gives the aff ground – just defend the args the Aff placed in the 1AC. This also applies to other frames that we’ll critiqued.

## Case

#### ( ) Presumption.

#### The 1AC is heavy on diagnosis and light on remedy. There’s a diagnosis of identity and violence, but little discussion of how the black mathematically successfully re-distributes privilege.

#### Sure, the 1AC critiques Topicality – but that alone isn’t a reason to affirm. Vote neg on presumption - K Affs still have solvency burdens.

#### ( ) It’s not just D – if Black Mathematics fails to generate new collectives it is a non-workable concept for social justice strategies. That trap empowers reigning ideologies.

Bryant ‘12

(Levi Bryant is currently a Professor of Philosophy at Collin College. In addition to working as a professor, Bryant has also served as a Lacanian psychoanalyst. He received his Ph.D. from Loyola University in Chicago, Illinois, where he originally studied 'disclosedness' with the Heidegger scholar Thomas Sheehan. Bryant later changed his dissertation topic to the transcendental empiricism of Gilles Deleuze, “Critique of the Academic Left”, http://larvalsubjects.wordpress.com/2012/11/11/underpants-gnomes-a-critique-of-the-academic-left/)

Unfortunately, the academic left falls prey to its own form of abstraction. It’s good at carrying out critiques that denounce various social formations, yet very poor at proposing any sort of realistic constructions of alternatives. This because it thinks abstractly in its own way, ignoring how networks, assemblages, structures, or regimes of attraction would have to be remade to create a workable alternative. Here I’m reminded by the “underpants gnomes” depicted in South Park: The underpants gnomes have a plan for achieving profit that goes like this: Phase 1: Collect Underpants Phase 2: ? Phase 3: Profit! They even have a catchy song to go with their work: Well this is sadly how it often is with the academic left. Our plan seems to be as follows: Phase 1: Ultra-Radical Critique Phase 2: ? Phase 3: Revolution and complete social transformation! Our problem is that we seem perpetually stuck at phase 1 without ever explaining what is to be done at phase 2. Often the critiques articulated at phase 1 are right, but there are nonetheless all sorts of problems with those critiques nonetheless. In order to reach phase 3, we have to produce new collectives. In order for new collectives to be produced, people need to be able to hear and understand the critiques developed at phase 1. Yet this is where everything begins to fall apart. Even though these critiques are often right, we express them in ways that only an academic with a PhD in critical theory and post-structural theory can understand. How exactly is Adorno to produce an effect in the world if only PhD’s in the humanities can understand him? Who are these things for? We seem to always ignore these things and then look down our noses with disdain at the Naomi Kleins and David Graebers of the world. To make matters worse, we publish our work in expensive academic journals that only universities can afford, with presses that don’t have a wide distribution, and give our talks at expensive hotels at academic conferences attended only by other academics. Again, who are these things for? Is it an accident that so many activists look away from these things with contempt, thinking their more about an academic industry and tenure, than producing change in the world? If a tree falls in a forest and no one is there to hear it, it doesn’t make a sound! Seriously dudes and dudettes, what are you doing? But finally, and worst of all, us Marxists and anarchists all too often act like assholes. We denounce others, we condemn them, we berate them for not engaging with the questions we want to engage with, and we vilify them when they don’t embrace every bit of the doxa that we endorse. We are every bit as off-putting and unpleasant as the fundamentalist minister or the priest of the inquisition (have people yet understood that Deleuze and Guattari’s Anti-Oedipus was a critique of the French communist party system and the Stalinist party system, and the horrific passions that arise out of parties and identifications in general?). This type of “revolutionary” is the greatest friend of the reactionary and capitalist because they do more to drive people into the embrace of reigning ideology than to undermine reigning ideology. These are the people that keep Rush Limbaugh in business. Well done! But this isn’t where our most serious shortcomings lie. Our most serious shortcomings are to be found at phase 2. We almost never make concrete proposals for how things ought to be restructured, for what new material infrastructures and semiotic fields need to be produced, *and when we do*, our critique-intoxicated cynics and skeptics immediately jump in with an analysis of all the ways in which these things contain dirty secrets, ugly motives, and are doomed to fail. How, I wonder, are we to do anything at all when we have no concrete proposals? We live on a planet of 6 billion people. These 6 billion people are dependent on a certain network of production and distribution to meet the needs of their consumption. That network of production and distribution does involve the extraction of resources, the production of food, the maintenance of paths of transit and communication, the disposal of waste, the building of shelters, the distribution of medicines, etc., etc., etc. What are your proposals? How will you meet these problems? How will you navigate the existing mediations or semiotic and material features of infrastructure? Marx and Lenin had proposals. Do you? Have you even explored the cartography of the problem? Today we are so intellectually bankrupt on these points that we even have theorists speaking of events and acts and talking about a return to the old socialist party systems, ignoring the horror they generated, their failures, and not even proposing ways of avoiding the repetition of these horrors in a new system of organization. Who among our critical theorists is thinking seriously about how to build a distribution and production system that is responsive to the needs of global consumption, avoiding the problems of planned economy, ie., who is doing this in a way that gets notice in our circles? Who is addressing the problems of micro-fascism that arise with party systems (there’s a reason that it was the Negri & Hardt contingent, not the Badiou contingent that has been the heart of the occupy movement). At least the ecologists are thinking about these things in these terms because, well, they think ecologically. Sadly we need something more, a melding of the ecologists, the Marxists, and the anarchists. We’re not getting it yet though, as far as I can tell. Indeed, folks seem attracted to yet another critical paradigm, Laruelle. I would love, just for a moment, to hear a radical environmentalist talk about his ideal high school that would be academically sound. How would he provide for the energy needs of that school? How would he meet building codes in an environmentally sound way? How would she provide food for the students? What would be her plan for waste disposal? And most importantly, how would she navigate the school board, the state legislature, the federal government, and all the families of these students? What is your plan? What is your alternative? I think there are alternatives. I saw one that approached an alternative in Rotterdam. If you want to make a truly revolutionary contribution, this is where you should start. Why should anyone even bother listening to you if you aren’t proposing real plans? But we haven’t even gotten to that point. Instead we’re like underpants gnomes, saying “revolution is the answer!” without addressing any of the infrastructural questions of just how revolution is to be produced, what alternatives it would offer, and how we would concretely go about building those alternatives. Masturbation. “Underpants gnome” deserves to be a category in critical theory; a sort of synonym for self-congratulatory masturbation. We need less critique not because critique isn’t important or necessary– it is –but because we know the critiques, we know the problems. We’re intoxicated with critique because it’s easy and safe. We best every opponent with critique. We occupy a position of moral superiority with critique. But do we really do anything with critique? What we need today, more than ever, is composition or carpentry. Everyone knows something is wrong. Everyone knows this system is destructive and stacked against them. Even the Tea Party knows something is wrong with the economic system, despite having the wrong economic theory. None of us, however, are proposing alternatives. Instead we prefer to shout and denounce. Good luck with that.

#### Contingency’s true. The Aff structural uniqueness premise is too sweeping, ignores history, and argues from premise-to-conclusion.

Thomas ‘18

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There is here a general critical erasure of the massive tradition of Black anti-colonialism —or anti-colonial Black resistance to “anti-Black-ness” and anti-Black colonialism , which transcends nationalization. Wilderson’s “Afro-pessimist” rejects the anti-colonialist paradigms of supposedly “other” peoples, and yet in a manner that reinstates US or Western coloniality nonetheless—a white colonialism that oppresses “the Black” inside and outside the United States’s official geopolitical limits. This position can thus make a virtue out of automatic and abso-lute anti-alliance postures with no further, actual political action then required for Black people, “the Black critic,” or any Black liberation struggle on this view. Such chauvinism without political commitment or engagement beyond critique is logically consistent, for pessimism, where mere resentment or ressentiment can masquerade as resistance or “pro-Black” “radicalism.” After all, Afro-pessimism ( 2.0 ) begins with a proud suspicion of Black liberation or Black liberation move- ment, itself, no less than of its potentially “anti-racist” or “anti-Black” political alliances. This provincial “American” pessimism reveals more affinities with Créolite in the Caribbean than Césaire’s anti-colonialist eruption of Pan-African Négritude , in reality, its narrowly and nega- tively delimited rhetoric of the “Blackness” of “the Black” (as “Slave,” of course) notwithstanding. As if this too is a virtue, pessimism is not just suspicious of power but possibility—while, upholding dystopia, it is casually dismissive of all historical actuality that does not support a pessimist paradigm, orientation or sensibility. Analytically, moreover, there is somehow no white colonialism for Blacks to fight in Africa or Black countries of Black people anywhere and no terrible landlessness that afflicts the African diasporas of Blackness captive within white settler and/or imperial state formations, for Wilderson and Afro- pessimism ( 2.0 )

The pessimist rejection of anti-colonialism goes particularly awry with Fanon. The institution of academia came to Fanon late with great selectivity. It isolates him from the whole tradition of Black anti-colonialism (or anti-colonialist Blackness) so that he becomes a cipher, a sort of color-blinding Rorschach test even. In fact, Fanon is isolated from himself. The Fanon taken up like a weapon by the Black liberation movement of the 1960s and '70s with the "African Revolution" at large was a militant practitioner and is the author of an extant four-volume body of work recently even collected in the form of a hefty oeuvre complète by French as well as Arabic world publishers(i.e., La Découverte and Al Hibr). The Fanon examined in academia got reduced to a very few pages of Black Skin, White Masks, which was written when Fanon still thought he could be "French" and faithful to French colonial empire while opposing physiognomic but not cultural or "civilizational" racism. That text of the middle-class assimilé is of two minds—ambivalent with its currents of brilliance. Yet this [End Page 295] Fanon becomes "post-colonialist" for US academia when truthfully he becomes "anti-colonialist" and only later both in battle and in the related texts likewise disregarded by Afro-pessimism (2.0): Wilderson privileges the colonized Fanon rather than A Dying Colonialism and Toward the African Revolution as well as The Wretched of the Earth.

The standard suppression of The Wretched of the Earth cannot succeed in Red, White & Black. Wilderson tries to dichotomize Fanon so that Black Skin, White Masks (1952) is cast as a text about "race" and "slavery," and thereby "Blackness": The Wretched of the Earth is by contrast cast as a "post-colonial's" text primarily about "land restoration," or "settler colonialism," as if they can be cast apart from "Blackness" and Black struggles.32 This is a false dichotomy. Fanon's corpus does not yield this schism. It should go without saying that Black Skin, White Masks is itself a text of colonialism. It is often and falsely read as an exclusively "Caribbean" text, inapplicable to Afro-North America or even non-French colonies in the Caribbean, despite its central references to Chester Himes and Richard Wright as well as "Brer Rabbit" folklore; and even though this Fanon had written, "I come back to one fact: Wherever he goes, the Negro remains a Negro."33 The Wretched of the Earth is often and falsely read as an exclusively "Algerian" text, inapplicable to North America, despite its numerous references to "niggers" as well as Négritude or "Negro-African" culture—Blackness, especially for the Second Congress of Black Writers and Artists in Rome; despite its global "Third World" politics; and despite Fanon's aggressively militant Pan-Africanism. It remains easy for some to ignore Fanon's insistent categorization of the Algerian revolution as an African revolution as well as how "anti-Black racism" along with anti-Black slavery has lived on the African continent, not exclusively in Africa's Black diaspora. Curiously, Wilderson's Incognegro would expose the counter-insurgent canonization of Black Skin, White Masks in certain quarters, thanks to his youthful contact with the Black Panther Party, which did not dichotomize Blackness or anti-Blackness and colonialism or anti-colonialism in its own revolutionary Fanonism. It trafficked mostly in Les damnés de la terre: "…my father had caught me with it last night and beat the living daylights out of me—so I knew it must be good. That had never happened with Invisible Man. Then, using one of my old cocktail party gimmicks, I quoted a passage of Fanon from memory: 'From birth, I began,' it is clear to him that this narrow world, strewn with prohibition, can only be called into question by absolute violence.' I told Darnell that for some strange reason that had made me think about Kenwood, but why, I didn't know; nor did I know why my father had beaten me when Fanon's other book, Black Skin, White Masks, was nestled on his bookshelf beside the works of Sigmund Freud" (Wilderson 2008, 247).34 While Sexton counts the sum total of references to "Fanon" in Red, White & Black, as if this datum [End Page 296] alone should impress critical audiences, his tabulation begs the question of which Fanon is referenced and how in a manner all too faithful to the white academic management of Fanon and Fanonism as a crisis to be contained by whatever means:35 Red, White & Black seeks to quarantine The Wretched of the Earth from Kenwood or Minnesota, and all settler sites of US colonialism, conceding it away from "Blackness" in an ongoing quarrel with Native American, post-colonialist, and sometimes Palestinian "analogy," even though Wilderson needs to mine its rhetoric at key moments—to speak of putting the enemy "out of the picture" and bringing about "the end of the world" via "absolute violence," for example, when narratively these words then become the words of "Fanon" rather than those of The Wretched of the Earth specifically, given Wilderson's conventional academic preference for a colonially decontextualized Black Skin, White Masks.

No antithesis of "slavery," colonialism becomes unrecognizable as colonialism in Wilderson in ways sacrificial of the Blacks and Blackness subject to it—on and off official plantations. Firstly, colonialism cannot be granted as an object of study to "postcolonial" theory in US or Western academia. It can only appropriate the matter or study of colonialism—from the long history of anti-colonialist theory and praxes preceding it and persisting in spite of it—as a colonizing political act itself, an arrogant critical appropriation that Wilderson routinely accepts without question. What's more, slavery in "Plantation America" is colonial slavery, just as colonialism is a slaveocratic mode of colonialism in the Western Hemisphere. Walter Rodney was sure to note as much explicitly in articles such as "Slavery and Underdevelopment" (1979) as well as "Plantation Society in Guyana" (1981). There is no system of slavery in any part of these Americas that is not still settler colonial slavery; no settler colonialism without chattel slavery or racial slavery and their neo-slaveries. Finally in this regard, colonialism is not reducible to a simple matter of cartography—or "the postcolonial's capacity for cartographic restoration."36 The likes of C.A. Diop and Césaire aside, this is why Amilcar Cabral could write Our People Are Our Mountains (1972); and why Sylvia Wynter would engage Anibal Quijano's "coloniality of power" framework with "Unsettling the Coloniality of Being/Power/Truth/Freedom" (2003); and why one apparently disappeared Black radical tradition would theorize "internal colonialism" or "domestic colonialism" along with "eternal colonialism" and "neo-colonialism," from within the US imperial colony, long before the commercialization of "postcolonialism" or "postcolonial theory" in Western academia. This is further why Fanon himself would write in A Dying Colonialism: "It is not the soil that is occupied. It is not the ports or the airdromes. French colonialism has settled itself in the very center of the Algerian individual and has undertaken a sustained work of cleanup, of expulsion of self, of rationally pursued mutilation" (Fanon 1965, 65).37 This [End Page 297] is why Fanon himself would write for an El Moujahid article now in Toward the African Revolution: "True liberation is not that pseudo-independence in which ministers having a limited responsibility hobnob with an economy dominated by the colonial pact. Liberation is the total destruction of the colonial system, from the pre-eminence of the language of the oppressor and 'departmentalization,' to the customs union that in reality maintains the former colonized in the meshes of the culture, of the fashion, and of the images of the colonialist."38 This is also why it is important to recall that it was never a strictly cartographic colonialism bereft of slavery and Blackness that led Fanon to promulgate his vision of "new humanity" so fully and graphically in The Wretched of the Earth after A Dying Colonialism beyond Black Skin, White Masks.

Fanon's "Worlds," Revisited

Thus there is the serious problem of elliptical truncation in Wilderson's repeated quotation of the "end of the world" line taken from Fanon's Black Skin, White Masks. The "world" is never so generic and singular as pessimism would have it, whether in or outside this or that Fanon—whether it is the critical but "French" colonial Fanon or the radically decolonizing Fanon who wages pan-African revolt against the French and all colonialism. The younger Fanon wrote, "The Martinican is a man crucified. …[M]y friend had fulfilled in a dream his wish to become white—that is, to be man. …I will tell him, 'The environment, society are responsible for your delusion.' Once that has been said, the rest will follow of itself, and what that is we know. The end of the world."39 The "world" in question is quite a specific one. It is not the only world that is, or ever was, before another must be created into being out of necessity. It is the white world that represents itself "as if" (to borrow a turn of phrase from Wynter here) it were the only world in truth.

#### Antiblackness is incomplete and open to resistance. Political closure is impossible and unknowable and reversed by institutional engagement.

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I begin with this tale of philosophical abstraction to contextualize Afropessimism. Its main exemplars, such as Jared Sexton and Frank Wilderson III, emerged from academic literary theory, an area dominated by poststructuralism even in many cases that avow ‘‘Marxism.’’ Sexton (2010) and Wilderson (2007) divert from a reductive poststructuralism, however, through examining important existential moves inaugurated, as Daniel McNeil (2011, 2012) observed, by Fanon and his intellectual heirs. The critical question that Afropessimism addresses in this fusion is the viability of posed strategies of Black liberation. (I’m using the capital ‘‘B’’ here to point not only to the racial designation ‘‘black’’ but also to the nationalist one ‘‘Black.’’ Afropessimists often mean both, since blacks and Blacks have a central and centered role in their thought.) The world that produced blacks and in consequence Blacks is, for Afropessimists, a crushing, historical one whose Manichaean divide is sustained contraries best kept segregated. Worse, any effort of mediation leads to confirmed black subordination. Overcoming this requires purging the world of antiblackness. Where cleansing the world is unachievable, an alternative is to disarm the force of antiblack racism. Where whites lack power over blacks, they lose relevance – at least politically and at levels of cultural and racial capital or hegemony. Wilderson (2008), for instance, explores my concept of ‘‘an antiblack world’’ to build similar arguments. Sexton (2011) makes similar moves in his discussions of ‘‘social death.’’ As this forum doesn’t afford space for a long critique, I’ll offer several, non-exhaustive criticisms.

The first is that ‘‘*an* antiblack world’’ is not identical with ‘‘*the world is antiblack*.’’ My argument is that such a world is an antiblack racist project. It is not the historical achievement. Its limitations emerge from a basic fact: Black people and other[s] opponents of such a project fought, and continue to fight, as we see today in the #BlackLivesMatter movement and many others, against it. The same argument applies to the argument about social death. Such an achievement would have rendered even these reflections stillborn. The basic premises of the Afropessimistic argument are, then, locked in performative contradictions. Yet, they have rhetorical force. This is evident through the continued growth of its proponents and forums (such as this one) devoted to it.

In *Bad Faith and Antiblack Racism*, I argued that there are forms of antiblack racism offered under the guise of love, though I was writing about whites who exoticize blacks while offering themselves as white sources of black value. Analyzed in terms of bad faith, where one lies to oneself in an attempt to flee displeasing truths for pleasing falsehoods, exoticists romanticize blacks while affirming white normativity, and thus themselves, as principals of reality. These ironic, performative contradictions are features of all forms of racism, where one group is elevated to godlike status and another is pushed below that of human despite both claiming to be human.

Antiblack racism offers whites self-other relations (necessary for ethics) with each other but not so for groups forced in a ‘‘zone of nonbeing’’ below them. There is asymmetry where whites stand as others who look downward to those who are not their others or their analogues. Antiblack racism is thus not a problem of blacks being ‘‘others.’’ It’s a problem of their not-being-analogical-selves-and-not-evenbeing-others. Fanon, in Black Skin, White Masks (1952), reminds us that Blacks among each other live in a world of selves and others. It is in attempted relations with whites that these problems occur. Reason in such contexts has a bad habit of walking out when Blacks enter. What are Blacks to do? As reason cannot be forced, because that would be ‘‘violence,’’ they must ironically reason reasonably with forms of unreasonable reason. Contradictions loom. Racism is, given these arguments, a project of imposing non-relations as the model of dealing with people designated ‘‘black.’’

In Les Damne´ de la terre (‘‘Damned of the Earth’’), Fanon goes further and argues that colonialism is an attempt to impose a Manichean structure of contraries instead of a dialectical one of ongoing, human negotiation of contradictions. The former segregates the groups; the latter emerges from interaction. The police, he observes, are the mediator in such a situation, as their role is force/violence instead of the human, discursive one of politics and civility (Fanon, 1991). Such societies draw legitimacy from Black non-existence or invisibility. Black appearance, in other words, would be a violation of those systems. Think of the continued blight of police, extra-judicial killings of Blacks in those countries.

An immediate observation of many postcolonies is that antiblack attitudes, practices, and institutions aren’t exclusively white. Black antiblack dispositions make this clear. Black antiblackness entails Black exoticism. Where this exists, Blacks simultaneously receive Black love alongside Black rejection of agency. Many problems follow. The absence of agency bars maturation, which would reinforce the racial logic of Blacks as in effect wards of whites. Without agency, ethics, liberation, maturation, politics, and responsibility could not be possible.

Afropessimism faces the problem of a hidden premise of white agency versus Black incapacity. Proponents of Afropessimism would no doubt respond that the theory itself is a form of agency reminiscent of Fanon’s famous remark that though whites created le Ne`gre it was les Ne`gres who created Ne´gritude. Whites clearly did not create Afropessimism, which Black liberationists should celebrate. We should avoid the fallacy, however, of confusing source with outcome. History is not short of bad ideas from good people. If intrinsically good, however, each person of African descent would become ethically and epistemologically a switching of the Manichean contraries, which means only changing players instead of the game. We come, then, to the crux of the matter. If the goal of Afropessimism is Afropessimism, its achievement would be attitudinal and, in the language of old, stoic – in short, a symptom of antiblack society. At this point, there are several observations that follow. The first is a diagnosis of the implications of Afropessimism as symptom. The second examines the epistemological implications of Afropessimism. The third is whether a disposition counts as a political act and, if so, is it sufficient for its avowed aims. There are more, but for the sake of brevity, I’ll simply focus on these.

An ironic dimension of pessimism is that it is the other side of optimism. Oddly enough, both are connected to nihilism, which is, as Nietzsche (1968) showed, a decline of values during periods of social decay. It emerges when people no longer want to be responsible for their actions. Optimists expect intervention from beyond. Pessimists declare relief is not forthcoming. Neither takes responsibility for what is valued. The valuing, however, is what leads to the second, epistemic point. The presumption that what is at stake is what can be known to determine what can be done is the problem. If such knowledge were possible, the debate would be about who is reading the evidence correctly. Such judgment would be a priori – that is, prior to events actually unfolding. The future, unlike transcendental conditions such as language, signs, and reality, is, however, ex post facto: It is yet to come. Facing the future, the question isn’t what will be or how do we know what will be but instead the realization that whatever is done will be that on which the future will depend. Rejecting optimism and pessimism, there is a supervening alternative: political commitment.

The appeal to political commitment is not only in stream with what French existentialists call l’intellectuel engage´ (committed intellectual) but also reaches back through the history and existential situation of enslaved, racialized ancestors. Many were, in truth, an existential paradox: commitment to action without guarantees. The slave revolts, micro and macro acts of resistance, escapes, and returns help others do the same; the cultivated instability of plantations and other forms of enslavement, and countless other actions, were waged against a gauntlet of forces designed to eliminate any hope of success. The claim of colonialists and enslavers was that the future belonged to them, not to the enslaved and the indigenous. A result of more than 500 years of conquest and 300 years of enslavement was also a (white) rewriting of history in which African and First Nations’ agency was, at least at the level of scholarship, nearly erased. Yet there was resistance even in that realm, as Africana and First Nation intellectual history and scholarship attest. Such actions set the course for different kinds of struggle today.

Such reflections occasion meditations on the concept of failure. Afropessimism, the existential critique suggests, suffers from a failure to understand failure. Consider Fanon’s notion of constructive failure, where what doesn’t initially work transforms conditions for something new to emerge. To understand this argument, one must rethink the philosophical anthropology at the heart of a specific line of Euromodern thought on what it means to be human. Atomistic and individual substance-based, this model, articulated by Hobbes, Locke, and many others, is of a non-relational being that thinks, acts, and moves along a course in which continued movement depends on not colliding with others. Under that model, the human being is a thing that enters a system that facilitates or obstructs its movement. An alternative model, shared by many groups across southern Africa, is a relational version of the human being as part of a larger system of meaning. Actions, from that perspective, are not about whether ‘‘I’’ succeed but instead about ‘‘our’’ story across time. As relational, it means that each human being is a constant negotiation of ongoing efforts to build relationships with others, which means no one actually enters a situation without establishing new situations of action and meaning. Instead of entering a game, their participation requires a different kind of project – especially where the ‘‘game’’ was premised on their exclusion. Thus, where the system or game repels initial participation, such repulsion is a shift in the grammar of how the system functions, especially its dependence on obsequious subjects. Shifted energy affords emergence of alternatives. Kinds cannot be known before the actions that birthed them.

Abstract as this sounds, it has much historical support. Evelyn Simien (2016), in her insightful political study Historic Firsts, examines the new set of relations established by Shirley Chisholm’s and Jesse Jackson’s presidential campaigns. There could be no Barack Obama without such important predecessors affecting the demographics of voter participation. Simien intentionally focused on the most mainstream example of political life to illustrate this point. Although no exemplar of radicalism, Obama’s ‘‘success’’ emerged from Chisholm and Jackson’s (and many others’) so-called ‘‘failure.’’ Beyond presidential electoral politics, there are numerous examples of how prior, radical so-called ‘‘failures’’ transformed relationships that facilitated other kinds of outcome. The trail goes back to the Haitian Revolution and back to every act of resistance from Nat Turner’s Rebellion in the USA, Sharpe’s in Jamaica, or Tula’s in Curac¸ao and so many other efforts for social transformation to come.

In existential terms, then, many ancestors of the African diaspora embodied what Søren Kierkegaard (1983) calls an existential paradox. All the evidence around them suggested failure and the futility of hope. They first had to make a movement of infinite resignation – that is, resigning themselves to their situation. Yet they must simultaneously act against that situation. Kierkegaard called this seemingly contradictory phenomenon ‘‘faith,’’ but that concept relates more to a relationship with a transcendent, absolute being, which could only be established by a ‘‘leap,’’ as there are no mediations or bridge. Ironically, if Afropessimism appeals to transcendent intervention, it would collapse into faith. If, however, the argument rejects transcendent intervention and focuses on committed political action, of taking responsibility for a future that offers no guarantees, then the movement from infinite resignation becomes existential political action.

At this point, the crucial meditation would be on politics and political action. An attitude of infinite resignation to the world without the leap of committed action would simply be pessimistic or nihilistic. Similarly, an attitude of hope or optimism about the future would lack infinite resignation. We see here the underlying failure of the two approaches. Yet ironically, there is a form of failure at failing in the pessimistic turn versus the optimistic one, since if focused exclusively on resignation as the goal, then the ‘‘act’’ of resignation would have been achieved, which, paradoxically, would be a success; it would be a successful failing of failure. For politics to emerge, however, there are two missing elements in inward pessimistic resignation.

The first is that politics is a social phenomenon, which means it requires the expanding options of a social world. Turning away from the social world, though a statement about politics, is not, however, in and of itself political. The ancients from whom much western political theory or philosophy claimed affinity had a disparaging term for individuals who resigned themselves from political life: idio¯te¯s, a private person, one not concerned with public affairs, in a word – an idiot. I mention western political theory because that is the hegemonic intellectual context of Afropessimism. We don’t, however, have to end our etymological journey in ancient Greek. Extending our linguistic archaeology back a few thousand years, we could examine the Middle Kingdom Egyptian word idi (deaf). The presumption, later taken on by the ancient Athenians and Macedonians, was that a lack of hearing entailed isolation, at least in terms of audio speech. The contemporary inward resignation of seeking a form of purity from the loathsome historical reality of racial oppression, in this reading, collapses ultimately into a form of moralism (private, normative satisfaction) instead of public responsibility born of and borne by action.

The second is the importance of power. Politics makes no sense without it. But what is power? Eurocentric etymology points to the Latin word potis as its source, from which came the word ‘‘potent’’ as in an omnipotent god. If we again look back further, we will notice the Middle Kingdom (2000 BCE–1700 BCE) KMT/ Egyptian word pHty, which refers to godlike strength. Yet for those ancient Northeast Africans, even the gods’ abilities came from a source: In the Coffin Texts, HqAw or heka activates the ka (sometimes translated as soul, spirit, or, in a word, ‘‘magic’’), which makes reality. All this amounts to a straightforward thesis on power as the ability with the means to make things happen.

There is an alchemical quality to power. The human world, premised on symbolic communication, brings many forms of meaning into being, and those new meanings afford relationships that build institutions through a world of culture, a phenomenon that Freud (1989) rightly described as ‘‘a prosthetic god.’’ It is godlike because it addresses what humanity historically sought from the gods: protection from the elements, physical maledictions, and social forms of misery. Such power clearly can be abused. It is where those enabling capacities (empowerment) are pushed to the wayside in the hording of social resources into propping up some people as gods that the legitimating practices of cultural cum political institutions decline and stimulate pessimism and nihilism. That institutions in the Americas very rarely attempt establishing positive relations to Blacks is the subtext of Afropessimism and this entire meditation.

The discussion points, however, to a demand for political commitment. Politics itself emerges under different names throughout the history of our species, but the one occasioning the word ‘‘politics’’ is from the Greek po´lis, which refers to ancient Hellenic city-states. It identifies specific kinds of activities conducted inside the city-state, where order necessitated the resolution of conflicts through rules of discourse the violation of which could lead to (civil) war, a breaking down of relations appropriate for ‘‘outsiders.’’ Returning to the Fanonian observation of selves and others, it is clear that imposed limitations on certain groups amounts to impeding or blocking the option of politics. Yet, as a problem occurring within the polity, the problem short of war becomes a political one.

Returning to Afropessimistic challenges, the question becomes this: If the problem of antiblack racism is conceded as political, where antiblack institutions of power have, as their project, the impeding of Black power, which in effect requires barring Black access to political institutions, then antiblack societies are ultimately threats also to politics defined as the human negotiation of the expansion of human capabilities or more to the point: freedom.

Anti-politics is one of the reasons why societies in which antiblack racism is hegemonic are also those in which racial moralizing dominates: moralizing stops at individuals at the expense of addressing institutions the transformation of which would make immoral individuals irrelevant. As a political problem, it demands a political solution. It is not accidental that Blacks continue to be the continued exemplars of unrealized freedom. As so many from Ida B. Wells-Barnett to Angela Davis (2003) and Michelle Alexander (2010) have shown, the expansion of privatization and incarceration is squarely placed in a structure of states and civil societies premised on the limitations of freedom (Blacks) – ironically, as seen in countries such as South Africa and the United States, in the name of freedom.

#### **Their evidence in the small text explicitly says Indigenous and African Indigenous people can use settler institutions to their advantage.**

MSU = Blue

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In 1907, two geology professors, G.E. Condra and Charles N. Gould, published an informational tract in the Bulletin of the American Geographical Society touting Indian Territory’s prospects as a destination for industrious white settlers. Included in “Opening of the Indian Territory” was a narrative on the territory’s burgeoning petroleum industry, which Condra and Gould predicted would continue to grow. They lamented how the collective system of land tenure practiced by the territory’s Indigenous nations and “Government control” (a reference to federal restrictions) had retarded oil prospecting. However, in the authors’ eyes the allotment of Indian land into individual properties was quickly solving that problem; indeed, on the verge of statehood, Indian Territory contained thousands of oil wells and a “nearly continuous line of derricks,” seventy-five miles in length, that extended from southern Kansas to Tulsa. Condra and Gould’s interest in oil was perhaps predictable given their backgrounds in the infant science of geology. But their guide to Indian Territory was just as invested in explaining the region’s racial makeup. The two white authors noted the differences they saw between “full-blood,” “mixedblood,” and “quarter-breed” Indians; indicated that Cherokees had for years readily mixed with whites, while Creeks tended to marry into Black families; and insisted that white civilization was bound to overtake this mixed-race world. “The white man is to rule,” they stated, “and the problem of the Indian is largely solved in his amalgamation.” It had been the “destiny” of Indigenous people to “give [their] blood and a few strong traits” to white society, but to otherwise disappear. Meanwhile, “The negro is to remain a problem in social, educational, and industrial matters.” It was from this “cosmopolitan body” that the “crucible of civilization is to reduce a citizenship” in Indian Territory.1

Over the following two decades, establishing the white man’s citizenry that Condra and Gould envisioned turned out to be heavily rooted in funneling the streams of wealth that flowed from petroleum into the hands and pockets of whites, despite Indian Territory and Oklahoma’s status as a region of widespread Indigenous, African Indian, and African American landownership. The practices that allowed white people to remove oil wealth from Native and Black pockets were the product of a racialized mineral regime founded upon the settler principle that non-whites were especially incapable of self-governance in a world of petroleum abundance. This principle was baked into the settler-colonial policy of allotting collectively held tribal land into privately owned homesteads. As part of this process, white lawmakers and officials prevented newly-minted Indian landowners from alienating their allotments and mandated that white guardians oversee the leasing of land for oil production. Likewise, the State of Oklahoma required that white guardians oversee oil-rich allotments owned by Black citizens of the state’s Indian nations. While such rules ostensibly “protected” Indigenous and Black Indigenous landowners from losing their property, they provided a legal path through which white settlers seized Native property, squandered Black and Indigenous wealth, and forced Indians and other peoples of color off of the most desirable pieces of oil land.2

Allotment was a federally backed scheme to educate Natives in the traditions of economic individualism and cultural liberalism, to force Indigenous peoples to, as one historian puts it, learn the “whitening culture of capitalism.” However, the potential of great mineral wealth in Indian Territory destabilized this social-engineering project, which was built on the assumption that large swaths of land of relatively equal value could be easily divided among tribal citizens. Contrary to this, oil abundance offered a handful of “full-blood” Indians and African Natives unimaginable riches through the tapping of dormant petroleum resources, which undermined white reformers’ goals of transforming Native people into yeoman farmers and wage workers.3 For lawmakers, federal agents, and local officials and business owners, this threat to the reformative ethos of allotment helped justify white control of Natives’ oil inheritance. Oil booms threatened to equip people of color with social and economic power just as whites worked to define and instill a racial hierarchy that achieved the opposite. It became imperative for whites to closely manage Indigenous and Black petroleum property, not only as a means of expanding the former’s material possessions, but also as an avenue through which social difference could be more broadly policed and white sovereignty achieved. Despite this, Indigenous and African Indigenous individuals used settler institutions, such as state and county courts, to defend their right to oil-rich property and to leverage the racialized property regime that assumed their incompetence to their advantage.4

White settlers claimed hydrocarbons for themselves not only by appealing to racialized notions of “competence” rooted in the assumption that non-whites could not grasp the value of fossil-fuel energy. They also drew upon fears that white enterprises were constantly under the threat of domination by “outside” monopolies to argue that petroleum and the lands it resided beneath must be controlled by “local” whites. In both instances, white settlers struggled to reckon with how petroleum altered distributions of wealth and property. Oil booms enriched non-white individuals while leaving many white people in possession of worthless land and under the economic thumb of monopolistic oil corporations. This only further encouraged the development of an oil-field culture that dismissed non-white communities as rightful claimants to “black gold” while elevating the righteousness of small-scale, settler-owned enterprises. Borrowing from the historian Timothy Mitchell, the conflicts over racial identity, property rights, and distributions of wealth that rankled white people’s claims over Indian- and Black-owned oil land amounted to the “engineering [of] political relations out of flows of energy.”5 In Indian Territory and Oklahoma, this energy politics often resulted in carbon despotism, as petroleum abundance encouraged undercapitalized white oilmen to embrace a politics that fused white supremacy and anti-monopolism and drove broad resistance to nonwhite wealth and sovereignty. The latter not only resulted in myriad individual attacks on people of color, but, as we will see in the conclusion, also contributed to one of the United States’ worst race massacres on record.6 Native Sovereignty, the Politics of Monopoly, and the Discovery of Oil in Indian Territory Between the late nineteenth and early twentieth centuries, crude oil’s place in the economy, ecology, and culture of Indian Territory transitioned from the low-impact use of petroleum as a health product, to the Anglo-American-led establishment of high intensity drilling ventures aimed at securing one of nature’s densest forms of energy. The earliest petroleum-centric enterprises in Indian Territory had been tribally-owned health resorts that marketed oil springs as rehabilitative. In 1853, a federal Indian agent stationed in the Choctaw Nation reported on such a spring, writing, “[t]he oil springs in this region are attracting considerable attention, as they are said to be a remedy for all chronic diseases … The fact is that it cures anything that has been tried.” Gardner Tubby, an African Choctaw man, worked at a tribally owned health resort where he labored among springs black with oil and collected petroleum-laden sands that guests used as a salve to treat “boils, cuts, bruises and other afflictions of the human body.” The business thrived for ten or fifteen years, beginning in 1881, and Tubby recalled that “[t]he sick and afflicted would come from far and near, camp and drink and bathe in the water from these springs.” Native people and settlers across North America had long utilized oil seeps and other naturally-occurring petroleum springs for medicinal purposes. Skimmed from water sources by human hands and applied to the body, this method of use in many ways contradicted the industrial extraction of petroleum that white Americans developed beginning in the second half of the nineteenth century. Thus, oil’s centrality to energy systems was only one chapter in its history as a utilitarian substance. Nevertheless, the geologic circumstances that brought oil to the surface in the form of springs also beckoned those whose interest lay in petroleum’s combustibility.7 The first discoveries of extractable deposits of oil in Indian Territory vexed Native governments, federal officials, and oil companies, as the rights of non-Native prospectors and enterprises in Indian Territory remained ill-defined. In 1859, Lewis Ross, the brother of Cherokee Chief John Ross, accidentally discovered a small oil pool near Grand Saline in the Cherokee Nation while mining for salt. Ross’s find occurred the same year that drillers in western Pennsylvania sank the first profitable oil wells in the United States. In the years following the Cherokee man’s discovery, a handful of white oil drillers traveled to Indian Territory to sink exploratory “wildcat” wells. These oilmen met formidable obstacles in their efforts to create a viable petroleum industry. For one, Indian Territory remained geographically isolated from petroleum markets and largely bereft of the industrial materiel and concentrated capital that successful drilling ventures required. Furthermore, in the late nineteenth century, it remained unclear to oil prospectors and Indian nations alike just how federal policy would govern mineral extraction. The Five “Civilized” Tribes (the Cherokee, Chickasaw, Choctaw, Creek, and Seminole Nations) barred white people from citizenship and restricted landownership to intermarried whites, but retained little power when it came to negotiating leases with outside companies. When white prospectors did enter Indian Territory, federal officials tended to insist that these U.S. citizens cease operations and leave the Native nations.8 By the end of the nineteenth century, the conflicts that arose around the leasing of land for oil production conjoined with the politics of allotment, which combined race-based defenses of private property and anti-monopolism in calling for the dissolution of communal tribal land bases. In the eyes of allotment’s supporters, Native nations ultimately could not be incorporated into the United States because they were uncommitted to the establishment of private-property relations. In short, as the anthropologist and historian Patrick Wolfe writes, in the eyes of many white Americans, “Indians were the first communist menace.” Senator Henry Dawes of Massachusetts chaired the Dawes Commission, which was established in 1893 to lead negotiations with the Five Tribes and achieve the transformation of their communally held lands into individually owned homesteads. Dawes and other white “Indian theorists” of the time demanded allotment based upon a moral and ethical defense of individually-held private property. Dawes described Native people’s communal land regimes as “Henry George’s system,” understanding common property not as a long-standing tenet of Indigenous culture and nationhood, but in Euro-American terms that equated communalism with single taxers, Marxists, and other radical leftists. He lamented that, with Indigenous property relations, “There is no selfishness, which is at the bottom of civilization.” The Dawes Commission and its supporters also viewed allotment as a means to fight monopoly. Allotment would, in theory, redistribute land controlled by a consolidated minority of “mixed bloods,” or those Natives considered “whiter” than others—usually by a combination of white familial ties and a commitment to market relations—to the majority “full bloods,” those individuals considered furthest from racial and cultural whiteness. In hopes of socially reengineering “full bloods” into whiter subjects, the commission placed restrictions on the sale of individual Indians’ allotments based on blood quantum, which was established through often unreliable surveys. The more Native “blood” the state deemed an individual to have, the longer that Indigenous person was required to hold onto their land and, in the process, absorb the nuances of white yeoman culture and the rules of private property.9 Indian Territory’s Indigenous nations proved especially opposed to allotment. In the early nineteenth century the Five Tribes had been exemplars of self-directed adaptation to white civilization, adopting Anglo-American-style governmental institutions prior to their forced march westward from the southeastern United States to Indian Territory. However, by the late nineteenth century, these nations represented allotment’s strongest detractors. White officials grew convinced that the tribal nations in Indian Territory would never voluntarily give up their communal land base. When Congress passed the 1898 Curtis Bill, which created the final framework for the Five Tribes’ allotment, a Cherokee man voiced misgivings that other Indigenous peoples shared, sardonically writing, “there will be oil leases, asphalt leases, gold leases, stone leases, marble leases, granite leases, air leases, and possibly the very blessed light of the sun (should it prove capitalizable) may be captured and monopolized by some shrewd speculator under one of Charlie Curtis’ wonderful lease-traps.” While Native opposition was often fierce, the leadership among the Five Tribes begrudgingly accepted allotment, understanding that recalcitrance would end with the forced breakup of their collective land bases at the hands of the United States.10 Indian leaders tasked with navigating allotment and the ongoing prospecting and leasing of their land looked to petroleum resources as a means to maintaining a semblance of collectivism. Principle Chief Pleasant Porter of the Creek Nation regretted the discovery of oil on Creek land made by white and “mixed-blood” drillers in the summer of 1901. Porter feared that the oil finds, which occurred near a tiny cattle town called Tulsa, would complicate the allotment process, making land that was previously worthless from an agricultural standpoint suddenly desired by whites and Indians alike. He believed that allottees should seek out a home and livelihood on tracts that had a “normal use as agricultural lands,” while oil land should be declared surplus and proceeds from it distributed for the benefit of “every citizen of the [Creek] Nation.” Such a regime was not unheard of. The Osage Nation retained collective mineral rights and distributed royalties from oil production through such a system. However, Porter’s call for the nationalization of petroleum would not be realized among the Five Tribes. Indian allottees, through the oversight of local, state, and federal officials, would sign leases and earn royalties from oil as individual landowners. These conditions not only met the Dawes Commission’s conception of allotment as a mediated introduction of Indians to white people’s market economy, but also fit the notion that Indians’ communal holdings were in fact monopolies controlled by nefarious outsiders, and that the preservation of any collectivist property relations would disintegrate into the same.11 The idea that only white-settler enterprising could thwart monopoly power also painted demands for more liberalized leasing and oil-production rules on Native-owned land. Seymour Riddle, a white attorney representing the United Commercial Clubs of the Indian Territory before a Senate committee in 1906, ridiculed federal rules that barred oilmen from selling their leases for profit and required lessees to prove that they held enough cash to develop a lease. “No individual or corporation without a vast amount of money can comply with these rules and the result is that only the very wealthy individuals and corporations of unlimited means have been able to secure the approval of very many oil and gas leases.” Riddle’s allusion to “corporations of unlimited means” was a veiled reference to Standard Oil, which smaller wildcat prospectors assumed was ever poised to dominate Indian Territory’s emerging petroleum fields. Riddle and other oil and gas developers hinged their arguments against federal rules on what often appeared esoteric, such as the requirement that drillers secure a bond that would insure their lease in case of a failed operation. However, such questions struck at the core of allotment, white settlement, and oil development: How should property be administered, and to whose ultimate interest? For Riddle and many other white oilmen—especially small independents— restrictions on the alienation of Indian property were “wrong on principle” and violated “business rule,” and thus must be eradicated, lest Standard and other monopolists prey on supposedly naïve Indigenous property holders and dominate markets in land and oil to the detriment of white settlers and their families.12 For these independent oilmen, race, minerals, and land were intertwined. Only a property regime established on the basis of small-scale white enterprise could thwart the wasteful monopolism of land and minerals by way of both large “outside” oil companies and federally protected, backward Indigenous landowners. Before the same Senate hearing, “Colonel” J.W. Zevely, a white man who represented the Muskogee Commercial Club, lambasted not only federal restrictions, but also the risk that Indians represented to the proper commercial use of oil and gas. Zevely objected to federal rules that required oil producers to pay Creek and Cherokee allottees $50 annually for unutilized gas wells. Race played into Zevely’s concerns. If a white oil producer abandoned a gas well, then control of the well reverted to the Indigenous allottee, “and he may not exercise the care that the lessee must preserve not to waste it.” Zevely was further angered when he could not obtain signatures on leasing papers without paying exorbitant bonuses to the individual Indian in question. And as prospecting for oil increased, so did the cost of bonuses. Zevely lamented the annoyance and out-of-pocket expenses this brought about and complained that “[a]n Indian may not know the value of his land, but just try to get a lease from him on some of his land, and you will see that he has a pretty good idea of what its value is— generally an inflated idea, though.” Ultimately, what angered Zevely most was that, in his view, the Department of the Interior unilaterally established the rules that governed how oilmen obtained access to Native land and minerals. He did not believe the federal government could exercise such close oversight of private enterprise. Zevely ended his statement by asserting that Congress “can’t pass laws that will protect a man against himself,” regardless of race.13 Ignoring men such as Pleasant Porter and the bonus demands of their own Indigenous lessors, Zevely and other white oilmen insisted that Indians could not grasp the value of petroleum nor conjure the capital and labor needed to pull it from the earth. If these and other white settlers understood the need for some mediation between settlers, the government, and Indigenous individuals in the realm of landownership, they rejected similar oversight of the subterranean world, despite the fact that the two were inextricably linked. Ultimately, what Zevely and many of his white contemporaries in Indian Territory desired was their own state, which would offer white businessmen the opportunity to form their own government that could set the rules of the oil game and achieve the expansion and intensification of white sovereignty. White men realized that dream in 1907 when Indian Territory and Oklahoma Territory were fused to form the State of Oklahoma, just as the largest oil booms yet seen in the region—booms that disproportionately occurred on Native allotments—commenced. Mixed-Race Oil Fields in a White Man’s State The allotment of tribal land and the discovery of new oil fields accelerated during the first decade of the twentieth century. In 1905, drillers again struck oil near Tulsa, opening the Glenn Pool field, the first large oil find in Indian Territory. The Texas Company (Texaco), Gulf Oil, and others built pipelines connecting the oil-producing area to refineries in Texas, Kansas, and the Chicago area. Tulsa quickly grew into a regional hub for the oil industry, becoming the home base for numerous banks, refineries, and oil-field service companies. The Glenn Pool field’s success meant the dreams and efforts of capitalists centered in New York City; skilled workers from the oil fields of Pennsylvania, Ohio, and West Virginia; and farm families from across the beleaguered cotton and wheat fields of the South and West fixed upon the region’s oil prospects. Wildcatters continued to open modestly producing fields until 1912, when another massive oil find was made fifty miles west of Tulsa, near the town of Cushing in Creek and Payne counties. Cushing quickly grew into one of the world’s most prodigious oil fields. The crude that drilling companies extracted from the lands of the Creek Nation was of especially high grade, perfect for refinement into gasoline, the demand for which had exploded with rises in automobile use and continued to expand as World War I kicked off in Western Europe. Production in the field peaked in April of 1915 at over three hundred thousand barrels a day, which at the time represented more than two-thirds of the high-grade crude oil produced in the Western Hemisphere. Oil companies extracted more than forty-nine million barrels (2.6 billion gallons) in 1915, with drilling centered on an area only ten miles long and three miles wide. Thirty refineries operated in the town of Cushing throughout the boom period. The field was home to the largest complex of petroleum-storage tanks in the world, covering 160 acres and containing four hundred 55,000-barrel tanks, which altogether could hold up to sixty million barrels of crude.14 Not only was the Cushing field a prolific producer, it also was built on a mosaic of racially diverse leases made up of white, Black, Indigenous, and immigrant landowners. Native royalty owners were especially prevalent in the field—upwards of 40 percent of the oil leases in Cushing faced federal restrictions based on the Indigenous “blood” of the leasing landowner. Before oil was discovered around Cushing, federal officials had allotted much of the land to “full-blood” and African Creeks, who were more likely than “mixed bloods” to oppose allotment and less likely to request a specific tract of land during allotment proceedings. The Dawes Commission arbitrarily assigned 160 acres to each of these Creeks—land that was often the least desirable from an agricultural standpoint. Many of these allottees were “conservative” Creeks who demanded the reinstitution of the original treaties that ceded Indian Territory to the Five Tribes in perpetuity. These Creeks and other “full-blood” factions formed the intertribal Four Mothers Society, which in 1906 petitioned Congress to restore past treaties that guaranteed sovereignty and lands in common. These Natives not only demanded the end of allotment, but, like Pleasant Porter, also called for the communal sharing of oil and gas. African American and African Indigenous landowners were also common in the field, with many of the latter being citizens of the Creek Nation. Finally, a number of Syrian immigrants obtained oil fortunes on land they originally purchased due to the deception of white promoters, who purposefully misrepresented its agricultural value.15 While conservative Natives had no interest in recognizing the authority of white governments in the former Indian Territory, many Indigenous land and royalty owners in the Cushing field demanded rights as citizens based on their identities as lessors.16 During court proceedings, white officials, oilmen, and Native individuals labored to construct race as a legal and rhetorical concept, revealing how oil booms raised vexing questions about the rights of Native property holders to participate in the petroleum economy. The story of Thomas Gilcrease, one of a number of tribal citizens who became successful oilmen, reflected this process of race-making in the oil fields. Gilcrease was the son of a white man and a Creek woman, and as such, was assigned an allotment not far from Tulsa. Drillers sank forty-nine wells on Gilcrease’s land beginning in 1906, when he was still a minor, and these wells produced upwards of twenty-five thousand barrels per month. When the original lease was due to end in 1911, the twenty-one-year-old entered into a partnership with several investors in order to keep the rigs on his land running. However, Gilcrease eventually took his partners to court, likely either because he was in debt to one of the partners or because he had received better offers from other investors. In court, Gilcrease claimed that he was in fact incompetent, uneducated, and inexperienced in matters of business, and that as a result, the partnership should be dissolved. The defendants in the case argued that Gilcrease was in fact of “more than average intelligence,” and of “at least three years active successful experience in business.” They insisted that Gilcrease understood the oil industry—the costs and risks of drilling, as well as the laws that governed extraction. At a more fundamental level, they were proclaiming that Gilcrease was white. In effect, Gilcrease’s partners argued that the “mixed-blood” Creek man’s experience in the oil business established his identity as a white man, and thus he should not be subject to the paternalistic state and federal laws that limited the property rights of Native citizens. Gilcrease attempted to wield the legal precept of incompetency to his advantage, a strategy that “mixed-bloods” could use to obtain power within Oklahoma’s racial caste system.17 In other cases, individual Indians argued against their declared incompetency, which prevented them from direct access to the money that their oil wells produced. Martha Jackson was a “full-blood” Creek who, alongside dozens of Native and non-Native parties, claimed ownership of a Cushing-field allotment inherited from a late relative. The disputed piece of land was originally titled to Barney Thlocco, a “full-blood” Creek man who, along with numerous members of his immediate and extended family, died of an unclarified infectious-disease outbreak in January of 1899. The large number of sudden deaths within one family, and the lack of clarity over the order in which the Thloccos succumbed to the disease, made inheritance a murky question. Subsequently, there were at least 147 claimants to Thlocco’s estate, including Martha Jackson, who was Barney Thlocco’s stepdaughter and likely his nearest living relative. While many of these claims were fraudulent, many Creeks and other members of the Five Tribes maintained kin ties that could not be easily squared with Anglo-American legal tenets, which tied inheritance to nuclear families and direct “blood” relatives, which whites understood through the lens of race and skin color. The desire of white officials to manage Native land on terms acceptable to such property laws made conflicts over oil and inheritance that much more frequent and fraught.18 In 1914, an African Creek lawyer named J. Coody Johnson represented Martha, who was still a minor at the time, and her father, Saber Jackson, in court regarding the inherited allotment. In exchange for representation, Saber—who was still Martha’s legal guardian in 1914—agreed to lease part of the allotment to Johnson for the purpose of oil and gas drilling, and in collaboration with a handful of white partners, Johnson formed the Black Panther Oil and Gas Company. The Black Panther’s first well on the Thlocco allotment produced twelve thousand barrels per day, a colossal amount of oil, the daily value of which at the time was upwards of $10,000. Indeed, the Thlocco tract quickly became one of the country’s most valuable petroleum properties. Johnson used profits from the Black Panther to settle hundreds of competing claims for the allotment, allegedly paying out a total of $300,000 to Indian claimants. Subsequently, Martha and Saber Jackson accused Johnson of using his clout as a well-known lawyer and his “great influence” among the Creeks to declare Saber unfit to act as guardian of Martha’s now-wealthy estate. The Jacksons claimed that Johnson implored a judge to assign one of the Black Panther partners, a white man named R.W. Parmenter, to oversee Martha’s oil royalties. Johnson accused Saber Jackson of “drunkenness” and of “flirting and scheming” with regard to the allotment, and that such behavior made him unfit to manage his daughter’s affairs.19 Unlike Thomas Gilcrease, Jackson and her lawyers fought back against the notion that Martha and Saber were incompetent and incapable of administrating the oil estate. Before the supreme court of Oklahoma, Jackson’s lawyers contended that “designing and artful persons” desired to “cheat, defraud and rob” Martha of her estate and inheritance by making false claims before county judges regarding her “competence.” Martha Jackson further alleged that the Black Panther owners had defrauded her of $1.2 million over a span of four-plus years. The Jacksons’ efforts partially prevailed, but not before Martha suffered a typical form of settler-colonial violence. In May of 1919, just days before her eighteenth birthday and a subsequent court hearing on her competency, unknown assailants kidnapped Jackson from the Dwight Indian Training School in Seminole County. Oil companies operating in Oklahoma frequently kidnapped Indian lessors, especially minors, in hopes of forcibly securing a signature from the allottee. Thomas Gilcrease himself was alleged to have whisked a Creek boy on the verge of gaining his majority as far as London in hopes of garnering a lease. Such kidnappings represented a violent form of Indian removal that white officials did little to stop. Despite the kidnapping and Jackson’s subsequent absence from court, the county judge still declared her incompetent, arguing that Martha was well known to him and that the court had “full knowledge of [Jackson’s] mental capacity.” Martha Jackson survived her ordeal and eventually won $300,000 from Black Panther. However, this represented only a quarter of what she claimed to have lost.20 Black Panther’s Thlocco lease became further implicated in the problems of racial property when questions about oil monopolies and resource conservation arose around its production efforts. The protection of white petroleum businesses and the regulation of market-destroying flows of oil combined here to form a white-supremacist oil-field politics that elevated independents as the most-worthy white men in the oil game. During the early twentieth century, crises of overproduction and oil waste frequently gripped the Southwest’s petroleum region, as scores of individual producers raced to capture as much oil from flush fields as quickly as possible. The result was momentous amounts of wasted crude, which ran freely down creeks, rivers, gullies, and streets, plus the collapse of oil prices due to the glut of supply. The Cushing field buckled under such conditions by early 1915. Oil slicks frequently accumulated on the Cimarron River, a tributary of the Arkansas, which flowed adjacent to the Thlocco allotment. These slicks routinely caught fire, charring and blackening the river’s wooded shoreline. Economic problems accompanied the ecological fallout. Due to oversaturated markets, prices had plummeted from over a dollar a barrel to around forty cents in less than a year. At the same time, Black Panther’s Thlocco lease was considered by many to be the most productive oil land in the state, valued at $2 million, and a major contributor to the overproduction crisis. As a result, Johnson’s lease became the object of scrutiny for white oilmen and public officials. Whenever overproduction gripped a field, small producing companies bristled at the power of larger companies and alleged monopolies, such as Standard’s subsidiary Prairie Oil and Gas. These latter companies often controlled pipelines that connected smaller producers to refining markets and their large-scale capitalization allowed them to weather periods of low prices when independent producers could not. When the Oklahoma Corporation Commission attempted to protect smaller companies in the Cushing field by arbitrarily inflating the price of oil, the Standard subsidiary cited Black Panther as a company that willingly sold oil at basement prices and therefore stood as proof that there was no need to artificially raise rates. Cushing’s independents criticized Black Panther as “the recreant Cushing price cutter” and urged producers and oil-field workers to support the corporation commission’s restrictions on sales. These oilmen believed that the corporation commission was the only bulwark preventing “one man from ruining the business of a thousand” and wanted to prove to Black Panther’s African Creek owner that he “cannot monkey with the bread and butter of an entire industry without getting thrashed for it.”21 Beyond this kind of thinly-veiled racist language lobbed at the Black Panther company, it is difficult to say just how J. Coody Johnson’s status as a Black oilman may have played into the controversies surrounding the Thlocco lease. The oil tract was so productive that it was bound to draw the attention of the region’s oilmen and lawmakers regardless of the identity of the leasing company. However, just as anti-monopolism had been invoked to support the dissolution of Native nations, the anti-monopolists who opposed Black Panther also often participated in early Oklahoma’s anti-Black white-supremacist movements. The white men who owned small oil-producing outfits in Oklahoma tended to be members of the local upper classes, formally detached from distant sources of consolidated capital but still considerably wealthy in their own right. Many had been among the early white settlers in Indian Territory and insisted upon their worthiness as property owners and as social and political leaders vis-à-vis not only “outside” corporations but also non-white peoples, whether Indigenous, Black, or mixed race. This class of propertied white men had not only championed allotment, but had also led the establishment of Oklahoma as a Jim Crow state.22 The combined interests of white nativism and oil-field anti-monopolism were perhaps best reflected by Wash Hudson, a Tulsan and a member of the Oklahoma House of Representatives. Amid the problem of collapsing prices, monopolistic pipelines, and overproduction in the Cushing field in 1915, Hudson coauthored a landmark oil conservation bill that bolstered the corporation commission’s power to set oil prices, strengthened common-carrier and common-purchaser laws in the state, and, in his words, represented “the only measure that has ever been proposed in any legislature that will have the effect of putting Standard Oil, the octopus of this country, on its knees to us.” Hudson’s bill passed, garnering support from numerous independent producers whose provincial, proprietary businesses he hoped to protect from outside corporate interests. Hudson was also a founding member of the Tulsa branch of the Ku Klux Klan. Alongside an oil-industry lawyer and a petroleum engineer, he was one of five original trustees of the Tulsa Benevolent Association (TBA), a corporation established in 1922 in the wake of the Tulsa race massacre that acted as a front for the newly-formed local chapter of the Klan. By 1923, the TBA had erected a three thousand-seat Klan headquarters known as “Be-No Hall,” as in “Be No Ni\_\_\_\_s, Jews, Catholics or Immigrants.” Hudson’s advocacy for both antimonopoly in the oil fields and white supremacy in Tulsa reflected the desire of white men to use local avenues of influence to distribute capitalist power and extractive wealth on their own terms, through means both legal and extralegal. Part of this strategy entailed mitigating the geological uncertainties of petroleum production by regulating drilling on independents’ terms, preventing flush oil-boom markets from destroying small-scale white enterprises. Of course, doing so meant contradicting the anti-regulatory rhetoric the same oilmen had used when eastern Oklahoma was Indian Territory. However, Hudson’s law was oil regulation enacted through the all-white, “local” state legislature that independents had always desired. White politicians such as Wash Hudson understood that regulating the flows of energy and money that coursed through the oil region was necessary for protecting the power of independent oilmen, a project that fit nicely into a larger settler-colonial regime that sought the creation of white property through the control of both Indigenous- and Black-owned land and labor.23 “The Richest Colored Girl in the World”: Oil (Mis)fortune on Sarah Rector’s Creek Nation Allotment The confluences of race and oil extended to the leasing of land owned by African Creeks, where the legal oversight of Indigenous citizens and Jim Crow-era whites’ assumptions about Blackness collided. Formerly-enslaved Black Creeks had been granted full citizenship in the Creek Nation as part of the tribe’s treaty with the U.S. government following the Civil War. As full tribal citizens, African Creeks received 160-acre allotments and were included on the tribal rolls, but because Black Creeks were defined as “freedmen” and not “Indians by blood,” the Bureau of Indian Affairs (BIA) did not claim jurisdiction over their allotments. However, county and state courts as well as the Creek Nation’s lawyers took a keen interest in how the allotments of Black Creeks were handled by the many oil companies vying for leases in the Cushing field. The most famous of these African Creek allottees was Sarah Rector, who was 10 years old when the Cushing boom commenced and whose oil-rich allotment quickly garnered her international fame as “The Richest Colored Girl in the World.” As a minor and, in the eyes of whites, a racially ambiguous lessor, she and her allotment came under special scrutiny.24 Controversy surrounding Sarah Rector’s land and oil wealth blew up in 1913 as the oil boom in Cushing grew, eliciting a series of investigations into Rector’s white guardian, the Prairie Oil and Gas Company, and the Rector family itself, all of which hinged on how race, property, and the vicissitudes of oil extraction interacted. Sarah and her mother (Rose), father (Joe), and five siblings lived in a small house with a single bed located near the all-Black town of Taft, situated along the Arkansas River southeast of Tulsa. Like many Creeks, Rector did not live on her allotment, which was located sixty miles to the west of Taft, just northeast of the boomtown of Oilton. Prairie Oil and Gas drilled fortynine producing wells on Rector’s allotment and during a five-month period in 1913 and 1914, the company paid Rector $46,000 in royalties. In addition to drilling for crude, Prairie extracted natural gas from the property. Sarah’s father, Joe, had been the legal guardian of his children’s estates, but the great wealth that Sarah accrued from oil royalties prompted a county judge to assign a white man, J.T. Porter, to oversee the girl’s finances. Joe Rector was seemingly stripped of his guardianship for no reason other than the color of his skin. Furthermore, the voices of Sarah and her family members remain largely absent from the testimony and litigation surrounding her estate. However, a handful of reports from probate lawyers and court rooms reveal how the Rectors navigated their circumscribed wealth and maintained a semblance of control over Sarah’s estate amid the oil boom. Joe Rector, who was a farmer, testified before a Muskogee County court that he wanted his daughter’s guardians to purchase a nearby tract of Arkansas River bottom land known as the Fish property. Rector had known the land his entire life and, due to his firsthand knowledge, was confident that the property was capable of producing a bale of cotton per acre, fifty bushels of corn, and two tons of alfalfa each growing season. He was already renting a portion of the property and at work cultivating parts of it and ensured that he would look after the land, make improvements, seek out tenants, and maintain connections with nearby markets. Joe Rector’s request can be viewed as not only an attempt to profit from his daughter’s oil royalties, but also a strategy for sinking stronger roots into the soil in the area surrounding his familial home. At the same time, Joe and Sarah’s guardian both insisted that offering portions of the land to sharecroppers would likely accrue twice as much income for Sarah’s estate as renting it for straight cash. Diversifying oil royalties into other forms of capital placed the Rectors on the winning end of the sharecropping system, one of the Southwest’s most insidious farm-labor regimes. White guardians also used oil wealth to instruct and include Black and Indigenous individuals in webs of debt and to “modernize” their Indigenous and Black Indigenous wards. Sarah could support family members using her royalties, but only in the form of loans entirely controlled by her white guardian. Rector’s estate had accrued $54,000 by mid-1914, of which $46,000 came from oil production. Sarah’s guardian J.T. Porter loaned $42,000 of this total to various parties, including to members of his family and members of the Rector family, at an 8 percent interest rate. A new lease negotiated with Prairie in 1918 garnered the Rector estate another $300,000, which Porter used to loan out mortgages, purchase a 452-acre farm on the Verdigris River near Tulsa, and invest $50,000 in government bonds.25 White officials designed the guardian system in ways that quelled fears that the considerably large payouts that oil leases offered Native landowners would allow kin groups and neighbors to maintain a semblance of communal subsistence, which undermined the ultimate goals of allotment. For instance, Thomas Leahy, a county judge, wrote to the Secretary of the Interior and defended the fact that Sarah obtained only $600 in 1913–1914, arguing that “other members of the family and neighbors” benefited from any cash paid out directly to Sarah more so than she did personally. Leahy’s rationale for limiting payments to Sarah confirmed allotment’s Anglo-American commitment to turning individuals into isolated economic subjects, undermining the Rectors’ ability to support larger networks of kin through Sarah’s oil wealth. Joe and Rose Rector allegedly objected to this norm. In 1914, a probate attorney in Muskogee wrote to Judge R.C. Allen in Washington, D.C., ensuring that Rector’s parents were “of fair intelligence and apparently hard-working, industrious people.” However, while Rose and Joe Rector realized that Sarah’s estate was of “considerable value and that it is a growing estate,” they did not fully embrace the idea that “the estate of their child is to be used wholly for [Sarah’s] personal comfort and advantage.”26 The management of Rector’s estate by white authorities went beyond controlling oil royalties and dictating investments. Guardians and BIA officials also used oil money to transform the daily lives of the Rector family and to physically remove Sarah from her home and eventually from the Creek Nation altogether. With the discovery of oil, Leahy and the guardian “agreed upon certain changes looking toward the betterment of conditions for Sarah and the entire family.” For Leahy, this meant purchasing new furniture and convincing Sarah’s mother to purchase land that would become the site of a new five-room cottage. Eventually, Sarah’s oil wealth proved great enough that white officials, both local and federal, sought out an elite boarding school for her to attend, laying the groundwork for her semipermanent separation from her family and their land. Indeed, she soon matriculated at Booker T. Washington’s Tuskegee Institute in Alabama. Leahy stated that her parents “strenuously objected to her leaving home at that time, she being but ten years of age.” Sarah used some of her allowance to purchase a phonograph; beyond this, there’s no indication that she purchased any additional personal items or gifts of her own accord.27 Sarah Rector’s wealth resulted in considerable fame in both the white and Black presses. Her background as a person of both African and Indigenous heritage grew increasingly obscured, as both non-Indigenous African Americans and white Americans claimed ownership of her story and her future. In 1913, the Black newspaper Chicago Defender reported that white people “have become so alarmed at the enormous wealth of this young girl” that some wanted to “enamel” her or devise other methods that would allow Rector to pass as white. The paper clearly demonstrated the malleability of race amid the oil booms when it reported that the Oklahoma legislature desired to pass a law declaring Rector a white person. “It’s the same old idea of the white man,” the paper continued, “that whenever a Negro achieves any distinction …some white men want to declare them white.” The Black press took a keen interest in Rector’s personal safety given her growing fame and fortune. Their interest was well warranted given the fate of other oil-rich Black children. For instance, in March of 1911, William Irvin, a prominent white Muskogee landowner, dynamited the home of a Black family in Sarah’s hometown of Taft, intentionally killing two children, Castella and Herbert Sells. Irvin organized the murder of the Sells children in order to gain title to their oil-rich Glenn Pool allotments. Seven men were indicted for the murders, but only Irvin and a Black accomplice who laid the dynamite were convicted.28 While the Black press positioned Sarah as an African American (but not Indigenous) child worthy of protection, the white press situated her as racially unfit to possess such a hydrocarbon inheritance. In 1914, the Kansas City Star described Sarah’s wealth and the oil riches of other Black Creeks with animosity and factual inaccuracies that served to paint Rector as especially backward, placing her beyond the boundaries of social acceptability and declaring her and her race unfit to possess oil wealth. The paper alleged that Sarah and her sister Mannie had become rich through the possession of land inherited from their deceased parents. Sarah’s parents were perfectly alive at the time, but the paper insisted otherwise, painting Sarah as “an orphan, rude, black and uneducated” and “as oblivious to the events of the world as an Eskimo.” This was part of a larger exposé on nonwhites who lucked upon wealth in the oil fields. The paper concluded, “[white] Oklahomans … don’t even stop to wonder at the selections Fortune makes when she picks out little darkies and immigrants on which to shower her wealth.” Oilmen and other white settlers did not consider such money to be “lost,” because non-white owners of oil land “will die, or someone will take it away from them and things will go back just like they were. And probably that is the correct solution of Fortune’s strange caprices.” In the eyes of the white press, Native American and Black wealth was an absurd, unjust coincidence of the oil fields, where immeasurable riches literally gushed from the earth. Many whites believed that the prodigious wealth that modern energy sources beckoned would inevitably and rightfully flow to the top of the racial hierarchy, regardless of the means.29 Conclusion: Oil, the Tulsa Race Massacre, and the Klan Unlike many other “full-blood” and African Creek individuals, Sarah Rector managed to live a life of relative comfort buoyed by her oil royalties. There is reason to believe that this was largely due to her fame, which brought her personal story to the attention of powerful African American activists, including Washington and W.E.B DuBois, who revealed her plight under Oklahoma’s guardian system to a national audience of civil rights proponents. She and her family moved to Kansas City in 1917 where she remained throughout most of her adulthood. Rector owned real estate in the city, continued to earn royalties from oil production, and operated a car dealership. She owned a “stable of Cadillacs and Lincolns” and was reportedly a fan of joyriding around the city, especially in large, gas-guzzling automobiles. In this way, petroleum both financed Rector’s wealth and fueled the freedoms that she practiced through that wealth. For so many others in Rector’s position, the fact remained that both cultures of racism and a color-bounded regime of property administered by whites resulted in alienation, dispossession, and violent death. The violence surrounding petroleum and non-white people’s property culminated in the 1921 Tulsa race massacre. While historians have revealed how the destruction of the Black neighborhood of Greenwood—known as “Black Wall Street”—at the hands of white rioters unfolded, few have made more than tangential connections between the massacre and Tulsa’s status as the so-called Oil Capital of the World.30 The attack on Greenwood commenced on May 31, following dubious accusations made by a young white woman that a Black elevator operator had assaulted her. However, the problems of oil wealth’s caprices simmered beneath the surface as white mobs gathered on the late-spring day. Tulsa, a major center of refining and oil-industry finance, was suffering from an oil depression at the time. A fall in prices following the end of World War I, a lack of new petroleum discoveries in Oklahoma, and the steady exhaustion of once-fecund oil tracts such as the Thlocco and Rector leases all plagued the city and surrounding rural areas. The lack of oil production further harmed landowners, who would have welcomed mineral royalties amid the growing postwar agricultural downturn. The relative economic prosperity of some Black residents only heightened the possibility of white resentment and violence. In the aftermath of the massacre, journalists and activists sympathetic to the cause of Black civil rights pointed to African American successes within the oil industry as a primary spark in initiating the white attack on Black Tulsa. James Weldon Johnson, the executive secretary of the NAACP in 1921, argued that oil fueled racial animosities in the runup to the massacre. He cited instances of Black landowners around Tulsa discovering rich oil reserves on their properties and, “because no white man would bore for them,” being forced to sell their land “at the white man’s price.” John Haynes Holmes, a white man who helped found both the NAACP and the ACLU, relayed the story of a Black family from Clearview, a community outside of Tulsa, who refused to sell their oil-rich farm despite the demands of their white neighbors. Soon after, the family of five was killed when an unknown arsonist burned down their home. For many Black Americans and their white supporters eager to assess the causes of the massacre, it was clear: if petroleum had precipitated these acts of violence, then it likely played a role in Greenwood’s destruction as well.31 The efforts of Wash Hudson and white oilmen to establish and strengthen the Ku Klux Klan in the wake of the Tulsa massacre was echoed across Oklahoma’s petroleum fields, where white-supremacist mobilizing was especially rampant. Oil towns proved to be ripe territory for migrant, non-white laborers and union activities, as well as the subsequent perception among many whites of rampant crime and vice. As a result, white vigilantism flourished in these areas. One white resident of Muskogee County, where Rector and her family lived, celebrated Klan vigilantism and concluded that white-supremacist action “certainly was born of great necessity in this oil country.” In Oilton, the boomtown adjacent to the Thlocco and Rector allotments, the local Klan built a regional headquarters that became a meeting place for several klaverns in northeast Oklahoma. One historian estimates that, among the five thousand residents of Oilton’s neighboring town of Quay, upwards of half were Klansmen during the early 1920s.32 This influx of white-supremacist power in the backyards of Indigenous and Black Indigenous allottees represented the aftermath of oil’s tumultuous rise to the top of regional and national imaginaries about race, property, and wealth. For many whites, vigilante violence was the necessary response to the numerous threats to their oil inheritance that arose via “outside” monopolies, unfit Indigenous property owners, and recalcitrant Black people. When white Americans emphasized the “windfall” that nonwhite peoples received due to oil abundance, they insisted upon a story of white settlement exempt from the ugly side of colonial dispossession and white-supremacist violence. Native peoples had been compensated, they suggested, and whatever happened afterward was simply confirmation of Indigenous people’s unreadiness for “civilization” and self governance. The story was the same for Black people, who had further provoked white backlash by flaunting their wealth in cities such as Tulsa. And when white people insisted upon the transfer of fossil-fuel wealth from “incompetent” Indians and African Indians to white guardians, they elided questions of power and injustice by invoking the assumed efficacy of law and bureaucratic oversight. Petroleum’s vexations—its great energy density accompanied by its unpredictable occurrence and habit of falling into seemingly unworthy hands—drove these cultural and institutional commitments to white supremacy in Indian Territory and Oklahoma.

#### Resistance can work within the limits of the state---refusing it denies agency

Roberts 17 – Neil Roberts, Professor of Africana Studies and Faculty Affiliate in Political Science at Williams College, MA and Ph.D. in Political Science from the University of Chicago, BA from Brown University, “Theorizing Freedom, Radicalizing the Black Radical Tradition: On Freedom as Marronage Between Past and Future”, Theory & Event, Volume 20, Number 1, January, Project Muse

The debate between Afro-pessimists and Afro-optimists is indicative of two contemporary positions that take seriously the condition of the enslaved and the question of freedom.26 However, despite differential articulations of their respective camps and divergent opinions on whether slaves ever avoid, in the language of Claudia Rankine, the condition of constant mourning,27 Afro-pessimists and Afro-optimists startlingly share a fundamental conviction: the belief that slaves across epochs exist in a state Orlando Patterson prominently calls *social death* in which, as a consequence of powerlessness, dishonor, and natal alienation, slaves are said to lack an inherent capacity for action.28

To be socially dead is to be a living zombie. To be a racialized slave in late modernity, for instance, is to be a non-agentic being subjected to relentless antiblackness. A slave can never be free, the logic goes, unless a free agent grants terms of the free life to the slave. Classic examples are manumission enacted by a master and emancipation proclamations resulting from a polity’s decree rather than slave resistance.

The premises of social death are misguided and antithetical to marronage philosophy. Afro-pessimists and Afro-optimists also mistakenly conflate the notion of social death with Fanon’s concept of the *zone of nonbeing*. Whilst a slave’s existence in the zone is hellish, the zone of nonbeing is “an extraordinarily sterile and arid region, an incline stripped bare of every essential from which a genuine new departure can emerge.”29 Experience inside the zone of nonbeing actually furnishes the possibility for consciousness-raising, individual and collective flight, and the becoming that is freedom.

Acts of marronage demonstrate the intrinsic agency of slaves. It’s the degrees of materialization of purposive movement that in part distinguishes slaves and non-slaves. It’s for these reasons and more why marronage still matters.

Discourse on marronage, which distills the aforementioned, conventionally refers to two forms: petit marronage (individual fugitive acts of truancy) and grand marronage (isolationist, autonomous, territorially bounded communities outside the parameters of a regime of unfreedom). These are models of flight normatively accepted in both extant anthropological and historical scholarship on maroon societies and archival documents. Studies on these types of marronage emphasize their manifestation in the Caribbean, Latin America, and Southeast Asia, but they have been and are still present throughout the globe, the United States included. The recent National Geographic feature story on the Great Dismal Swamp and Colson Whitehead’s 2016 National Book Award-winning novel, Underground Railroad, underscore this.30

Underground Railroad issues a searing portrayal of the protagonist-cum-fugitive slave Cora and the communities and activities Cora confronts and participates in. The protagonist takes flight from her plantation in Georgia and traverses the Carolinas, Tennessee, the North, and subsequently a new frontier, often with the assistance of the underground railroad network. Cora’s flight initially is in conjunction with another fellow dreamer and fugitive named Caesar and later it is in the manner of petit marronage on her own. Grand marronage ossifies when Cora reaches Indiana farther into the story.

Whitehead’s underground railroad contains elements of Afrofuturism, particularly in its depiction of the railroad as just that: an actual series of locomotives and underground stations rather than railroad as metaphor commonly understood.

Yet this makes sense. Robin Kelley remarks in a forum on black art matters and aesthetics of the black radical tradition that, whilst “Afrofuturism is wonderful,” “it is also a new word for a longer Black radical tradition of Marronage, seeking out free space, liberated territory.”31 Whitehead captures much of this in Cora’s tale.32

Petit and grand marronage, especially the second form and the politics of recognition habitually connected to it,33 nevertheless frequently encounter problems. They don’t aim to dismantle at the structural level the social and political orders of slaveholding polities, thereby remaining unreflective of mass revolutionary politics seeking to shatter the entire fabric of the state of society. Embarking on these modes of flight, however, can be linked to revolutionary processes as the brilliant writings of Frederick Douglass attest, for the psychological, cognitive, and metaphysical valences of freedom are noteworthy in this regard.

“Fight versus flight” is often a mantra classifying acts of marronage. I reject this. There are types of flight wherein the fight to exit regimes of slavery are paramount.

Sovereign marronage and sociogenic marronage are terms I’ve coined to denote two other types of flight and models of freedom that address mass revolutionary politics unencumbered by an individual’s wants or collective isolationist desires. Whereas sovereign marronage posits freedom emanating from the authority of a sovereign entity such as a lawgiver-political leader and subsequently trickling down to a mass of people, sociogenic marronage refers to the non-sovereign forging of freedom by the masses from the bottom up.

Sovereign marronage risks sullying the radicalism of marronage on a mass scale by the very concept of sovereignty that can stunt the input and visions of everyday people. Sociogenic marronage reflects the idealized scale and vision of versions of revolutionary politics, and by extension the most suggestive articulations of politics within the black radical tradition, devoid of hierarchy and the quest for unanimity sovereign moorings foster. Traditions, we must remember, still have multiplicities and competing ideals.

Modern traditions after the Treaty of Westphalia operate overwhelmingly within structures of the nation-state. The nation-state, however, doesn’t interrupt marronage. If anything, the nation-state, with its modern and late modern shortcomings, catalyzes marronage in its fugitive and longue-durée challenges to statecraft legitimacy. Structures of rule and governance mutate across time and types of marronage exist prior to, during, and after moments of transformation.

#### History proves important anti-racist gains are possible through the government

Smith 14 – Noah Smith, Professor of Finance at Stony Brook University, Ph.D. in Economics from the University of Michigan, 2011 Recipient of The Rackham International Research Award, “White Supremacy Does Not Reign Supreme”, Noahpinion, 3-22, http://noahpinionblog.blogspot.com/2014/03/white-supremacy-does-not-reign-supreme.html

Like pretty much everyone else, I love Ta-Nehisi Coates, but in recent years his writing has taken a turn for the pessimistic. During a recent argument with Jonathan Chait, he wrote:

Obama-era progressives view white supremacy as something awful that happened in the past whose historical vestiges still afflict black people today. They believe we need policies--though not race-specific policies--which address the affliction. I view white supremacy as one of the central organizing forces in American life whose vestiges and practices afflicted black people in the past, continue to afflict black people today, and will *likely afflict black people until this country passes into the dust*. (emphasis mine)

This kind of "nothing ever changes" viewpoint is seductive, especially to people who spend a lot of time reading history (as Coates does). Read war history, and you'll think that war will plague humanity forever; but if you look at the data, you see a very different picture.

Similarly, it is by no means certain that white supremacy will always define American society. Sure, white supremacy is still around, and is still powerful (see here, here, etc....there's no shortage of evidence). Sure, there will always be white supremacists out there - a chunk of white people who view the white "race" as their own "team", and who want that team to "win". But it seems quite possible that white supremacy will recede and recede until someday it's just one more toothless endemic disease lounging around in the gut bacteria of our national culture.

In fact, history and current events seem to favor that outcome. To say that white supremacy is as powerful today as in America's past is to deny rationality. The clearest piece of evidence of this is the election of Barack Obama. As Coates writes:

Barack Obama isn't the coach of "Team Negro," he is the commissioner of the league..."I’m not the president of black America," Barack Obama has said. "I’m the president of the United States of America."

The election of a black president obviously doesn't mean that white supremacy is gone from America. But would it have been possible in 1868? In 1968? Even in 1998? I don't think so. Obama's two elections don't show victory, but how can you deny that they show progress? They mean that a majority of Americans (who are increasingly less white) has twice been willing to make a black person their chief executive, their representative to the world, and the commander-in-chief of their armed forces. When enemies attack the United States, it is to a black man that Americans must turn - have chosen to turn - to defend them.

Of course, presidential elections are mainly symbolic choices. But if you look at the history of American policy, you see a steady march of very big, very real policy shifts that have coincided with (and perhaps caused) dramatic improvements in the lives of African Americans.

The first of these, obviously, was the Civil War, in which the people of the Union fought (and took 646,000 casualties!) not just to assert Northern power over the South, but to smash the idea of America as a slave empire. The forcible end of de jure segregation was another blow to white supremacy.

Even after the end of official segregation, black people remained mostly poor. But in the 1960s, the black poverty rate plunged from almost 56 percent to around 33 percent. Some of that probably reflects America's rapid economic growth. But some of it probably reflects the War on Poverty, which included a welfare system, government efforts to end private racial discrimination in hiring, and various Affirmative Action initiatives.

In other words, in the 60s, while white supremacy was still strong in America, it was not strong enough to prevent massive collective attempts to improve the welfare of African Americans - efforts that, in retrospect, look mostly successful.

In the 1970s and 1980s, black Americans' lives improved in another important way: education. Over those decades, the so-called "achievement gap" between black and white test scores shrank by about a third. Again, there are a lot of factors that might have caused this, but it's undeniable that during this period, the American government was actively trying to improve black people's economic situation through Affirmative Action, welfare, and busing programs. White supremacy was not strong enough to prevent these initiatives, even though it tried.

In the 1990s and 2000s, there was another massive improvement in black Americans' lives: security. Between 1990 and 2008, the black homicide victimization rate fell by half. This was accompanied by a similar or even greater decrease in all forms of violent crime. The upshot of this is that black people, though still not safe enough, are a lot safer in America today than they were back in the 1980s.

Was this increase in safety caused by a weakening of white supremacy? Maybe. Many attribute the fall in crime to America's policy of increased incarceration, which has disproportionately fallen on blacks. But an improved relationship between black communities and the police may also be responsible. Research shows that black police are less likely to disproportionately arrest black people, and that mixed black-white police forces tend to have better relationships with mostly-black communities. And the percentage of police who are black has exploded since the 1970s.

The increase in the number of black police itself represents a weakening of white supremacy. Police are the people who are entrusted with a democratic society's official monopoly on the use of force - hence, when the police are black, it means that black people are the guarantors of all Americans' safety. It means that white people too are depending on black people to defend them. As for the reason why the percent of black police has increased, whether it was due to government policy or to decreased racism in hiring, it represents a failure of white supremacy to prevent more and more official, legitimate power from being placed in the hands of black people.

So over America's history, we see a steady march of improvement in African Americans' lives. At the same time, we see a steady series of collective attempts by American society - by black Americans, and also by other Americans who simply don't want our society to be a racist one - to improve life for black America. Whether the latter caused the former is almost beside the point. The point is that white supremacy has been desperately fighting battle after political battle - and losing many more battles than it wins. Again and again, America has been faced with a choice of more white supremacy or less, and most of the time, it has chosen less.

White supremacy will never die. But no movement ever dies. There are probably still people out there who think that Europe should be ruled by a Holy Roman Empire. There are probably still people out there who think Stalin's economic policies were the best. But to deny that progress has been made against these movements is to deny rationality.

So don't be discouraged by the pessimism of Ta-Nehisi Coates' post. White supremacy is not dead, and it is not yet dying. But it continues to lose more battles than it wins. America is not an inherently white supremacist nation; white supremacy is not in our national DNA. To me the evidence says that the willingness to combat white supremacy is in our national DNA.

Acknowledging the progress that has been made against white supremacism does not weaken the case for further action against it. In fact, it strengthens the case.

#### The state is internally fragmented, not a smooth instrument of antiblackness---they overdetermine it’s essence, which crushes effective resistance

Khachaturian 17 – Rafael Khachaturian, Mellon Postdoctoral Fellow at the University of Pennsylvania's Andrea Mitchell Center for the Study of Democracy, PhD in Political Science from Indiana University, MA in Politics from The New School, BA in Philosophy and Social and Historical Inquiry from The New School, “Ditching the Deep State”, Jacobin, 2-20, https://www.jacobinmag.com/2017/02/deep-state-michael-flynn-leaks-federal-bureaucracy-trump

The Problem With the “Deep State”

The deep state concept is harmful in two key ways.

First, invoking the deep state implies a misleading view of the state as a monolithic, unitary actor. While the deep state is usually said to be a network of individuals and agencies, it is assumed that these component parts are held together by a common will or mission (in this case, something like defending the “national interest” against Trumpism). This leads to a reification of the state as an autonomous and internally coherent force.

Yet modern capitalist states are more fragmented than they appear. First, they are composed of class fractions and coalitions that have frequently clashing interests and are motivated by short-term considerations. Often, these internal differences arise from the pressure exerted by various economic interests (such as the competition between the financial, manufacturing, and small business sectors).

In addition, these class forces are intersected by other factors, including the different social bases of support behind the major political parties (including voter cleavages based on urban versus rural interests, racial and gender attitudes, and “populist” appeal), the mass media’s role in shaping certain ideological narratives, and competing visions of foreign policy and geopolitical strategy.

As the Greek sociologist Nicos Poulantzas wrote in State, Power, Socialism, we need to “discard once and for all the view of the State as a completely united mechanism, founded on a homogeneous and hierarchical distribution of the centers of power moving from top to bottom of a uniform ladder or pyramid.”

The state is better understood as a temporary and historically contingent crystallization of social forces, a formation whose institutions are as liable to come into conflict with each other in times of political duress as they are to align seamlessly in times of stability.

It is not at all clear, then, that the leaks are a power play by a unified deep state. The rivalry within the White House between the Bannon and Priebus camps, and Trump’s intent to govern by executive order (with little consultation from Congress, the Justice Department, or the federal agencies responsible for implementing these orders) have disturbed the normal functioning of the bureaucracy. As state personnel develop ways of coping with the unpredictable and ad hoc nature of this administration, the dissent within their ranks is a sign of the uncertainty that they have been thrown into since the election, rather than a well-coordinated, conspiratorial effort.

Second, to talk of the deep state is to suggest that political power is sealed off from broader social struggles.

The state–civil society binary is one of the fundamental bases of liberal political theory. But this distinction is largely a byproduct of the way that political power has represented itself, rather than a social fact.

Where the state ends and civil society begins has always been permeable and contested — in other words, subject to politics and political struggle. The state is not an entity standing over and above society, but instead one premised upon the social forces that bring it into being.

Loose talk of the “deep state” misses this crucial point, advancing instead a facile vision of institutionalized power that constitutes its own foundation, and is therefore opaque, mysterious, and beyond the reach of citizens.

The State and the Struggle

Rejecting the deep state framework is not an academic exercise. The way we think about the state shapes how we, as democratic agents, conceive of and relate to organized political power. It affects how we organize and participate in the growing movement against the Trump administration and the GOP’s agenda.

Treating the state as a nebulous substratum of bureaucratic networks and institutions — ones that really call the shots behind visible electoral politics — overlooks its potential as a terrain for political struggle. To again quote Poulantzas, “the State is not a monolithic bloc but a strategic field.” Through concerted struggles inside and outside of political institutions, the opposition can displace and alter the state’s internal dynamics.

They can attack the hegemonic coalition (currently headed by Trump) at the core.

What would this look in practice? What would it entail for the movement against Trumpism to analyze, leverage, and exploit for its own ends the various coalitions, fractions, and hegemonic blocs within the state that are now publicly clashing?

First, it would mean embracing the plurality of political resistance, from legislative pressure to marches and public demonstrations, economic boycotts, and civil disobedience. Since the election we have seen a new politicization of civil society, and the proliferation of local initiatives seeking to stem the new administration’s onslaught. Among these are the rapid growth of the Democratic Socialists of America, and the movements for sanctuary cities and campuses. These struggles in civil society always reverberate within the state, turning the latter into a contested ground where these new movements can push back, both directly within and outside of state institutions, against the Trump agenda.

Second, it would mean deepening the existing ties between the various popular struggles fighting Trump and the GOP, including the movements for women’s and reproductive rights, immigrant rights, workers’ rights, and environmental justice. In the short term, cultivating a broad coalition around overlapping interests (and seeking to fragment the support behind the Trump coalition, where possible) could encourage a further de-legitimization of the Trump administration’s far-right agenda, and thereby spur more refusals and defections from within the ranks of the civil service. Eventually, this movement building would go a long way in creating a positive common agenda for an already-revitalizing ;eft.

In sum, it would mean challenging the state’s ability to establish the new normal envisioned in Trump’s campaign agenda, and to inject popular struggles into the heart of the ruling coalition, which cannot act without the ongoing support of both major parties and the bureaucracy.

But for any of this to happen, we first have to abandon the idea of a coherent, unitary deep state that is dictating politics behind the scenes. Relying on an illusory deep state to save us indulges in a fantasy at a time when we can ill afford to do so.

# 2NC

#### “Federal Government” means the government of the United States of America

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 245)

the government of the United States of America

#### USFG is the government in Washington D.C.

Encarta 00 – Encarta Online Encyclopedia 2K <http://encarta.msn.com>

“The federal government of the United States is centered in Washington DC”

#### “Resolved” before a colon reflects a legislative forum

Army Officer School 4 – 5-12, “#12, Punctuation – The Colon and Semicolon”, <http://usawocc.army.mil/IMI/wg12.htm>

The colon introduces the following: a.  A list, but only after "as follows," "the following," or a noun for which the list is an appositive: Each scout will carry the following: (colon) meals for three days, a survival knife, and his sleeping bag. The company had four new officers: (colon) Bill Smith, Frank Tucker, Peter Fillmore, and Oliver Lewis. b.  A long quotation (one or more paragraphs): In The Killer Angels Michael Shaara wrote: (colon) You may find it a different story from the one you learned in school. There have been many versions of that battle [Gettysburg] and that war [the Civil War]. (The quote continues for two more paragraphs.) c.  A formal quotation or question: The President declared: (colon) "The only thing we have to fear is fear itself." The question is: (colon) what can we do about it? d.  A second independent clause which explains the first: Potter's motive is clear: (colon) he wants the assignment. e.  After the introduction of a business letter: Dear Sirs: (colon) Dear Madam: (colon) f.  The details following an announcement For sale: (colon) large lakeside cabin with dock g.  A *formal* resolution, after the word "resolved:"

Resolved: (colon) That this council petition the mayor.

#### Topical affs must forbid a practice --- plan is only a hindrance

Van Eaton et al 17 --- Joseph Van Eaton, Gail Karish Gerard Lavery Lederer, lawyers for BEST BEST & KRIEGER, LLP. Michael Watza, KITCH DRUTCHAS WAGNER VALITUTTI & SHERBROOK, “BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C”, COMMENTS OF SMART COMMUNITIES SITING COALITION, March 8, 2017 , https://tellusventure.com/downloads/policy/fcc\_row/smart\_communities\_siting\_coaltion\_comments\_mobilitie\_8mar2017.pdf

What are at issue legally are prohibitions and effective prohibitions, and not hindrances, as the Commission seems to suggest in its Notice. The term “prohibit” is not defined in the Act, but it has an ordinary meaning: to formally forbid (something) by law, rule, or other authority; or to “prevent, stop, rule out, preclude, make impossible.” A mere “hindrance” “is simply not in accord with the ordinary and fair meaning” of the term prohibit,104 and can provide no basis for additional Commission intrusions on local authority over wireless facilities. Much of what Mobilitie complains about is a “hindrance” at most (and usually a hindrance magnified by its own actions).

#### Scope is when the law applies

Dernbach 21 --- John C. Dernbach et al, Professor of Law at Widener's Harrisburg campus, teaching administrative law, environmental law, property, international law, international environmental law, sustainability and the law, and climate change, “A Practical Guide to Legal Writing and Legal Method”, In “Chapter 5: Reading and Understanding Statutes”, Feb 25th 2021,

Understanding the scope of a statute is the second step. A statute’s “scope” defines the persons to whom and the circumstances to which the statute applies. Some statutes, such as criminal statutes, apply to almost everyone with only minor exceptions (e.g., young children). Other statutes, however, apply only to certain classes of people, and/or only when certain factual circumstances exist. If the person or organization that you represent is not subject to the statute’s requirements, then the statute is not applicable to your client. Similarly, if your client’s conduct or desired course of action is not addressed in the statute, the statute is not applicable. Thus, efficient research and effective representation depend on a lawyer’s ability to determine whether and when a given statute applies to a client’s situation.

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

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

U.S. antitrust law is defined by federal and state statutes, as interpreted by the courts. The **core federal statutes** are the Sherman Act,1 passed by Congress in 1890, and the **F**ederal **T**rade **C**ommission2 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.

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## K

#### The term also essentializes all non-indigenous into a monolithic category. That essentializes and create binaries that make their solvency impossible.

**Phung ‘11**

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Not only have I drawn on Lawrence and Dua’s critical intervention but I have also nuanced the ways in which the entry of settlers of colour to Canada has put them in colonial relationships with Indigenous people. I recognize that relying on monolithic notions of the term “settler” runs the risk of reducing settler–Indigenous relations to overly simplistic binary models of thinking. If we lump all non-Indigenous people into a single category of settler, then do we risk erasing and subsuming the different histories and everyday experiences of settler privilege and marginalization from which white settlers and settlers of colour come from? As I said before, the questions and concerns I have been raising thus far are not meant to mitigate the complicity of settlers of colour; rather, I raise these complexities as part of a solidarity exercise that aims to recuperate the term settler as a politicized identification for white settlers and settlers of colour.14 I am interested in invoking an anti-colonial conceptualization of the term “settler” that both recognizes non-Indigenous complicity in Canada’s ongoing colonial project and stands in solidarity with the decolonization projects of Indigenous people. To self-identify as a settler rather than as a Canadian does not necessarily negate the rights and benefits of citizenship that settlers have come to accrue as a result of settler colonialism. But mobilizing all settlers to become aware of the ways in which their settler privileges are anything but natural and well deserved can constitute a first step in supporting Indigenous activism against settler domination.

**And, reject essentialism as the basis of claims – it’s inaccurate and exclusionary.**

**Heyes ‘97**

Cressida J. Heyes is currently employed as the Canada Research Chair in Philosophy of Gender and Sexuality at the University of Alberta, Edmonton.[1] Educated at Oxford University (BA) and McGill University (MA and PhD), “Anti-Essentialism in Practice: Carol Gilligan and Feminist Philosophy” – Hypatia; Vol. 12, No. 3, Summer, 1997 – available via J-Stor

Its neglect of power differences among women notwithstanding, much second wave theory was "essentialist" in ways that enabled feminists to attain highly significant, albeit partial, political goals. Bringing falsely general claims about "women" into contexts where all women are excluded does not constitute an adequate feminist politics, and certainly some second wave feminist theorizing both created and perpetuated overly general claims about women's oppression; in no way should the racist, classist, or heteronormative bases of some of this theory be minimized. Yet the constant reiteration of these problems seems paradoxically to reinforce them even as it decries them. Stressing the shortcomings of this body of theory, furthermore, tends to minimize the extent to which it did form the basis of opposition to conventional sexist political theorizing. For example, arguments that women had been excluded from categories such as "citizens" or "rational beings" constituted initial inroads into academic ignorance of feminist philosophy. This, in turn, created the conditions of possibility for a more thoroughgoing feminist critique of some of those very concepts. Thus essentialism should be recognized as an internal response to the limitations of a particular body of theory, which grew out of a certain practice. This critique can be understood as a necessary corrective, given the growing recognition that academic feminist theorizing, while marginalized in academia as a whole, was exclusionary and partisan in relation to women even as it presumed to speak for us all.

## Case

#### Anti-racist approach to antitrust exist

Weissmann ‘21

Shoshana Weissmann, Senior Manager, Digital Media, Communications; Fellow, 3-11-2021 – modified for language that may offend - https://www.rstreet.org/2021/03/11/we-need-antitrust-reform-for-the-little-guy/

Overhauling antitrust is in vogue. Just last month the House Judiciary Committee launched a new series of hearings to flesh out potential changes to America’s current approach to antitrust enforcement. On Thursday, the Senate Judiciary Committee’s Subcommittee on Competition Policy, Antitrust, and Consumer Rights is having a hearing on antitrust reform. And, in a sign of the times, left-of-center advocates want to ensure antitrust enforcers adopt an “anti-racist” agenda that places marginalized communities at the front of the discussion.

So often when we ~~hear~~ (consider) about antitrust, we think about the government seeking to break up large corporate monopolies. Before Google and Facebook, it was Microsoft. Before that, Ma Bell. But there is plenty of anti-competitive behavior that takes place outside of the realm of big business, and there is a way to reform such behavior that also places an emphasis on protecting disadvantaged communities: Congress can overturn the “state action doctrine” as applied to occupational licensing boards. This doctrine has long allowed semi-governmental occupational licensing boards to act in a blatantly anti-competitive manner—one that has a stark and disproportionate impact on ~~minorities~~ (those lacking socio-economic and-or racial privilege), the poor, and small-business entrepreneurs.

The overwhelming burden these occupational licensing requirements place on these groups is staggering, keeping people from earning an honest living, providing for their families, and contributing to society in the profession of their choice. These requirements include expensive schooling to certify practical skills that can be learned in other ways, or policies that limit participation in fields in the name of “safety,” when those safety issues are overblown.

In the 1950s, 1 out of every 20 people in the United States needed a license to do his or her job. Today, it’s 1 out of every 4. From the Obama administration to President Donald Trump to President Joe Biden, virtually everyone recognizes that something is horribly amiss. Even the Federal Trade Commission (FTC) released a detailed report in 2018 highlighting the dangers of overly burdensome occupational licensing and its disproportionate negative effects.

Bad board behavior is rampant. In recent years, Arizona’s cosmetology board cracked down on a student helping his community by cutting hair for people experiencing homelessness. Had Republican Gov. Doug Ducey not stepped in to help, the student’s career could have been ruined. African hair braider Isis Brantley was once arrested for braiding hair without a cosmetology license—a license that wouldn’t have even taught her to braid hair. In Louisiana, elderly widow Sandy Meadows was prevented by the board from earning a living arranging flowers because Louisiana requires a license to do so and she couldn’t pass an exam with a lower pass rate than the state’s bar exam. When she died, she was living in poverty.

The dirty open secret of occupational licensing boards is that they are often composed almost exclusively of people in the industry who have a direct stake in keeping others out. Cosmetology boards are often stocked with salon owners, for example. This kind of collusive, anticompetitive behavior aimed at entrenching incumbents to the detriment of workers, consumers, and society more broadly is exactly why we have antitrust laws in the first place.

The problem isn’t that enforcers don’t want to act—it’s that they can’t because of the “Parker” or “state immunity” doctrine. For nearly 80 years, there have been severe limits on how federal agencies and private plaintiffs could enforce America’s antitrust laws against a state-sanctioned entity, like an occupational licensing board. Under this doctrine, states are overwhelmingly protected from any kind of antitrust scrutiny, minus a few narrow exceptions.

Thankfully, courts have somewhat pulled back on this doctrine in recent years. In 2015, in a case involving non-dentists who were offering inexpensive teeth-whitening services, the Supreme Court refused to extend this immunity to North Carolina’s state dental licensing board because it was not actively supervised by the government and was composed of self-interested market participants. This decision was a step in the right direction, although its holding was narrow and the Parker doctrine was left largely intact.

Excluding competitors and keeping new entrants out of the market without reason is anticompetitive and should be punished, even when given a state’s stamp of approval. With its laser focus on antitrust, Congress is well-suited to take up the mantle on this issue.

Congress should empower antitrust enforcers like the FTC and DOJ to bring suits against these collusive bodies for their blatantly anticompetitive conduct. It can do this by overturning the state action doctrine’s application to licensing boards and allowing courts to look behind the veil of these “governmental” boards to gauge meaningfully whether they are engaging in intentionally anticompetitive conduct.

#### This disproves their structural claim and is independent offense: agency comes first: it’s vital to worth

Stahl 17 – Titus Stahl, Assistant Professor at the Faculty of Philosophy of the University of Groningen, “Fundamental Hope and Practical Identity”, Philosophical Papers, Volume 46, Number 3, November, p. 345-37 [language modified]

To better understand why we sometimes have reason to maintain a particular outlook on life that is constituted by responsiveness to specific reasons, it is worth turning to Charles Taylor's classic essay 'What is Human Agency?'. Taylor defends the thesis that part of what it is to be a person is to engage in what he calls 'strong evaluations'. Strong evaluations are second-order evaluations of our desires (i.e., evaluations that guide the incorporation of certain desires into our rational agency) that are guided by 'qualitative distinctions of worth'. Taylor argues that, at least in some cases, we may refuse to incorporate a desire into our agency not necessarily because this would block us from achieving our ends (such as when we forgo dessert to maintain a healthy weight) but because we view certain desires as intrinsically more valuable than others. Such an evaluation presup-poses a normative outlook on life that consists in a certain interpretation of our self. When evaluating whether to start a family in the suburbs or join a religious community in India, for instance, we must not only judge which action would result in a higher overall satisfaction of our desires or ends but also decide what kind of person we want to be, i.e., we have to decide what kinds of desires or ends count as relevant to who we are or want to become in the first place. In other words, we can only describe our actions as being guided by reasons if we have constituted our self as the kind of agent for whom certain things have a certain normative import; — and this means as an agent who endorses a certain vocabulary of strong evaluations. If we are capable of performing such strong evaluations — and Taylor claims that this capacity is 'essential to our notion of the human subject' - then we must have a (mostly non-articulated) *framework of worth* from within which we evaluate. Such frameworks, however, are themselves not chosen on the basis of an independent standard. Rather, according to Taylor, they are a predicament within which we find ourselves and which we can only explore by means of interpreting and understanding them better. That is, each decision about whether it would be acceptable to be some other kind of agent must be made from within the framework of evaluation that constitutes us as agents in the present.34 This provides an answer to the question of what reasons we have to remain within a particular framework (a question that Kors-gaard's account does not answer): We have reason to preserve a particular identity and the hopefulness associated with it if the values that are accessible from within our current identities disqualify taking on an alternative to that particular identity. Only at first glance does this appear to be an exceptional situation. Most people who endorse strong valuations -whether ethical, aesthetic or religious - would ~~view~~ [consider] the possibility of losing their responsiveness to their respective values as a loss of normative sensibility. In other words, losing such an identity might make certain values inaccessible — values that are fundamental to their being the kinds of agents they are.36 Taylor thus identifies the conditions under which it is neither possible nor rational to give up a particular identity and the hopes connected with it.

#### Their argument denies agency and winds-up hampering even non-institutional change strategies

Bodenner 15 (The author – qualified in greater detail below - is primarily citing the feedback of Melvin Rogers. Rogers is a professor of African American Studies and Political Science at U.C.L.A. Rogers wrote a seven-page review for the Atlantic, but below is a shorter edited version, posted with Rogers’ permission. Chris Bodenner is a senior editor at The Atlantic – and, in that capacity, also excerpted one comment for a reader that appears in this card. “Review of: Between the World and Me” - Book Club: Your Critical Thoughts – The Atlantic – July 26th – Modified for potentially objectionable language - <http://www.theatlantic.com/national/archive/2015/07/readers-critical-between-world-me-ta-nehisi-coates/399641/>) (this top portion is from Rogers – see quals above:)

Between The World and Me is an exquisite book, overflowing with insights about the embodied state of blackness and the logic of white supremacy. Coates’s prose is capable of challenging our understanding of the United States even as it captures our hearts. I plan to teach the book for two of my courses this academic year. But for all of the beauty and power of the book, it is also profoundly troubling. The wound of racism is too fresh; the sharpness of the pain captures Coates’s senses and arrests his imagination. The worry is that if we follow along, we, too, shall be captured. The book initially seems like it will reveal the illusion of the Dream and then open up the possibility for imagining the United States anew. But Coates does not move in that direction. He rejects the American mythos but also embraces the certainty of white supremacy and its inescapable constraints. For him, white supremacy is not merely a historically emergent feature of the United States; it is an ontology. White supremacy, in other words, does not structure reality; it is reality. There’s a danger there. When one conceptualizes white supremacy at the level of ontology, there is little room for one’s imagination to soar, and one’s sense of agency is inescapably constrained. Action is tied *fundamentally* to what we imagine is possible for us, but there can be no affirmative politics when race functions as a wounded attachment. What about all those young men and women in the streets of Ferguson, Chicago, New York, and Charleston—how should we read their efforts? Coates’s answer seems to appear in one of the pivotal and tragic moments of the book—the murder of a college friend, Prince Jones, at the hands of the police: [N]o one would be brought to account for this destruction... The earthquake cannot be subpoenaed. The typhoon will not bend under indictment. They sent the killer of Prince Jones back to his work, because he was not a killer at all. He was a force of nature, the helpless agent of our world’s physical laws. But if we are all just helpless agents of physical laws, the question again emerges: What does one do? Coates recommends interrogation and struggle. His love for books and his journey to Howard University—“Mecca,” as he calls it—serve to question the world around him. But interrogation and struggle to what end? “It is truly horrible,” Coates writes in one of the most disturbing sentences of the book, “to understand yourself as the essential below of your country.” Herein lies the danger: Forget telling his son it will be okay; Coates cannot even tell him it may be okay. “The struggle is really all I have for you,” he tells his son, “because it is the only portion of this world under your control.” What a strange form of control. Black folks may control their place in the battle, but never with the possibility that they, and in turn their country, may win. Releasing the book at this moment—given all that is going on with black lives under public assault—seems the oddest thing to do. For all of the channeling of James Baldwin, Coates seems to have forgotten that black(s) folks “can’t afford despair”: The reason why you can’t say there isn’t hope is not because you are living in a dream or selling a fantasy, but because there can be no certain knowledge of the future. Humility, borne of our ignorance of the future, justifies hope. Much has been made of the comparison between Baldwin and Coates, owing to how the book is structured and because of Toni Morrison’s endorsement. But what this connection means escapes many commentators. In Notes of a Native Son, Baldwin reflects on the wounds that white supremacy left on his father: When he died, I had been away from home for a little over a year. In that year I had had time to become aware of the meaning of all my father's bitter warnings, had discovered the secret of his proudly pursed lips and rigid carriage: I had discovered the weight of white people in the world. I saw that this had been for my ancestors and now would be for me an awful thing to live with and that the bitterness which had helped to kill my father could also kill me. Similar to Coates, Baldwin’s father was wounded and so was Baldwin. Yet Baldwin knew that wounded attachment would destroy not the plunderers of black life but the ones who were plundered. “Hatred, which could destroy so much, never failed to destroy the man who hated and this was an immutable law.” Baldwin’s father, as he understood him, was destroyed by hatred. So Coates is less like Baldwin in this respect and, perhaps, more like Baldwin’s father. “I am wounded,” writes Coates. “I am marked by old codes, which shielded me in one world and then chained me in the next.” The chains reach out to imprison not only his son, but you and me as well. Lastly, given the power of the book and its blockbuster success, Coates seems unable to linger on the conditions that gave life to the Ta-Nehisi Coates who now occupies the public stage. His own engagement with the world—his very agency—received social support. Throughout his book he recounts the rich diversity of black beauty and empowerment, especially at Howard. His father, William Paul Coates, is the founder of Black Classic Press, which focuses on the richness of black life. His mother, Cheryl Waters, financially support the family and provided young Coates with direction, especially with writing at an early age. And yet the adult Coates seems to stand at a distance from the condition of possibility suggested by those examples. Black life in America is at once informed by, but not reducible to, the pain exacted on our bodies by this country. This eludes Coates. The wound is so intense he cannot direct his senses beyond the pain. A long-time commenter, Cassandra777, is more blunt: Yes, Ta-Nehisi can write. But I miss the TNC who wrote about Jane Austen and the Cowboys and parallels between the Kulaks and Jews and Blacks, even the Civil War, before that got nutty … when his blog offered a fresh perspective, even if one disagreed with him. Now, he appears to me stuck in a single groove. It’s a groove that has made him famous, that resonates if you have a certain outlook, but instead of something fresh and original, it’s the same message of the last thirty years. The fact that it is written in a beautiful style doesn’t change the reality that the content itself is tired and unoriginal and his focus has narrowed down to this one subject. Sublimesl adds: The problem with reducing all of history, and indeed individuals, into these identities, as TNC does, is you are condemning the future to be very similar to the past. And you tacitly give credence to the assumptions of the worst of the white supremacists—that everything is all about these identities, that that is your authentic self. That’s a lie; we are first and foremost individuals.