# 1nc

## offcase

### 1nc – 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.

#### Topical Affs can be Negative State Action that ELIMINATE current Immunity protections imposed by the Congress or Federal Judiciary. That can address the 1AC themes of racialized capitalism. Those Affs wouldn’t commit error replication because Fiat can be defended as permanent.

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.

#### Topic Wording *does* support Negative State Action. Also means the 1AC violates these terms

Prelogar 21 --- ELIZABETH B. PRELOGAR Acting Solicitor General NICHOLAS L. MCQUAID Acting Assistant Attorney General DANIEL N. LERMAN Attorney, “MARCUS BROADWAY, PETITIONER v. UNITED STATES OF AMERICA, BRIEF FOR THE UNITED STATES IN OPPOSITION”, March 2021, https://www.supremecourt.gov/DocketPDF/20/20-836/172912/20210324190405385\_20-836%20Broadway.pdf

For the reasons stated in the government’s brief in opposition to the petition for a writ of certiorari in Tabb v. United States, No. 20-579 (Feb. 16, 2021), Application Note 1’s interpretation of the career-offender guideline as including attempt and conspiracy offenses, including attempted drug distribution, is firmly grounded in the guideline’s text. See Br. in Opp. at 9-10, Tabb, supra (No. 20-579) (Tabb Opp.). 3 Unlike an adjacent provision stating that a “crime of violence \* \* \* is murder” or a list of other specified offenses, Sentencing Guidelines § 4B1.2(a)(2) (emphasis added), the definition of “controlled substance offense” extends to any felony offense that “prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance,” id. § 4B1.2(b) (emphasis added). The term “prohibit” can mean “prevent from doing or accomplishing something,” Webster’s Third New International Dictionary of the English Language Unabridged 1813 (1986), and in that sense is synonymous with “hinder” or “preclude,” Black’s Law Dictionary 1465 (11th ed. 2019). Application Note 1 confirms that Section 4B1.2(b) uses the term “prohibit” in that sense. See United States v. Lange, 862 F.3d 1290, 1295 (11th Cir.) (explaining that Application Note 1 indicates that “‘[c]ontrolled substance offense’ cannot mean only offenses that forbid conduct outright, but must also include related inchoate offenses that aim toward that conduct”), cert. denied, 138 S. Ct. 488 (2017). The context, purpose, and history of the Guidelines further confirm that the definition of “controlled substance offense” is best understood to include inchoate offenses. Tabb Opp. 11-13

#### The Aff targets State conduct – but topical Affs must target private-sector conduct that’s distinct from the State:

Merriam Webster – No Date

(<https://www.merriam-webster.com/dictionary/private%20sector> - Accessed 30 Oct. 2021)

Definition of private sector

: the part of an economy which is not controlled or owned by the government

#### 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:

#### 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.

**Third- our Preparation 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.**

#### Extra-T’s a voter

Black anarchy – AT BEST – goes well beyond the world of Anti-Trust. It initiates outside the The State and lifts government action in many realms. Proves the Topic insufficient and links to our limits Offense. Also makes the 2NR impossible. If the lone impact’s severing, then we’d be forced to win Extra-T just to get back to square one and negate the rest of the Aff.

### 1nc – frames

**Next Off – Frame Subtraction:**

#### First – our links:

**The 1AC’s critique would be more potent if its inaccurate conception of social death were narrowly replaced with the notion of Fugitivity. That would better account for Black social life and agency.**

**von Gleich 17** Paula von Gleich is a doctoral candidate in American Studies at the department of Languages and Literatures, University of Bremen, Germany. She currently manages the office of the Association for Canadian Studies in Germany-Speaking Countries (University of Bremen) and of the Bremen Institute for Canada and Québec Studies. She received her master’s degree in Transnational Literary Studies and her bachelor’s degree in English-Speaking Cultures at the University of Bremen. In fall 2016, she was visiting scholar in residence at the Barnard Center for Research on Women at Barnard College and the Institute for Research on Women, Gender and Sexuality at Columbia University in the City of New York. Her dissertation project focuses on fugitivity and border concepts in contemporary African American theory and black diasporic narratives of captivity and fugitivity. She has co-authored a piece with Frank Wilderson and Samira Spatzek – specifically Wilderson, F., von Gleich, P. and Spatzek, S. (2016). ‘The Inside-Outside of Civil Society’: An Interview with Frank B. Wilderson, III. Black Studies Papers 2 (1): 4–22 - As a member of the doctoral network ‘Perspectives in Cultural Analysis: Black Diaspora, Decoloniality, and Transnationality,’ her broader research interests include African American and black diasporic literature and theory, critical race studies, and postcolonial and transnational literary studies. “Afro-pessimism, Fugitivity, and the Border to Social Death” - This card is from an excerpt from the book Critical Epistemologies of Global Politics – An E-IR Edited Collection. June 27 2017, http://www.e-ir.info/2017/06/27/afro-pessimism-fugitivity-and-the-border-to-social-death/

Fugitive Beginnings

Flight generally entails borders. Whether prison walls, plot boundaries, or borders between states, being fugitive implies that borders have been and/or are still to be overcome. One might assume that flight ends when the borders that stood between the captive and their freedom have been successfully crossed. Enslaved African Americans frequently fled their enslavers and legal owners in North America to gain freedom by, for instance, crossing the demarcating lines between slave plantation and the wilderness or the Mason-Dixon Line, the Ohio River, and the borders to Canada and Mexico into ‘free’ territory. However, with legislation such as the Fugitive Slave Acts, a fugitive slave remained retrievable property even in the supposedly ‘Free North’ so that freedom for a fugitive slave in nineteenth century North America was only a constrained form of freedom, if the term applies at all. But what if the ‘social death’ (Patterson 1982) that enslavement brought over ‘people racialised as Black’ (Coleman 2014: n.p.) has been never-ending as the Afro-pessimist Frank B. Wilderson III (2010) has suggested? And if so, how can we conceptualize **Black social life** that has **undoubtedly endured** despite social death in such a framework?

I assume that Afro-pessimism — in theorizing a structurally incommensurable demarcation between non-blackness and Blackness, civil life and social death, and between ‘the inside [and] outside of civil society’ (Wilderson, von Gleich, and Spatzek 2016: 15) — tacitly implies an epistemological border concept that continues to have very real (i.e., fatal) consequences for people racialized as Black in the United States of America and beyond since the transatlantic slave trade began.[1] Based on this understanding of Afro-pessimism as theorizing a structurally a priori incommensurable, **absolute**, and **antagonistic** demarcation, the border concept I consider in Afro-pessimist thought appears **decidedly different** from well-known conceptualizations of **permeable borders** as epistemological zones of dialectic cultural contact and conflict developed in American cultural and literary studies over the last thirty years. I argue that **the concept of fugitivity is more suitable** — than those concepts of borders as zones — when it comes to conceptualizing enduring Black social life in the face of anti-blackness as a constant struggle against social death. It is my contention that the ‘Black border’ in Afro-pessimism and the concept of fugitivity taken together might help convey very abstract and theoretically elaborate Afro-pessimist arguments, as figures of thought. They also make apparent the potential relations and tensions between the Afro-pessimist structural analysis of Blackness and fugitivity’s focus on the level of experience and performance, shedding light on the paradox of Black social life in social death.

This chapter begins with a summary of basic Afro-pessimist arguments in order to show how a border concept could be entertained in this radical trajectory of contemporary Black Studies in the United States. Second, I compare and contrast the proposed ‘Black border’ with Mary Louise Pratt’s concept of the ‘contact zone’ (Pratt 1991; 2008) as an example of a well-known conceptualization of a liminal border space. Third, I examine the ways in which fugitivity might be able to address both Black social life and accept basic Afro-pessimist assumptions condensed in the suggested border concept by drawing on Tina M. Campt’s engagement with the concept of fugitivity in Image Matters: Archive, Photography, and the African Diaspora in Europe (2012). It is in this manner that I encourage readers to think of fugitivity as a constant struggle against the ‘Black border’ without, however, ever dismantling the border or arriving at the other side that bodes civil life inside civil society only for the ‘non-black.’ Thus, I propose that the concept of fugitivity carries with it the potential of linking analyses of fugitive experiences and performances with an Afro-pessimist structural analysis of the position of Blackness.[2]

The Black Border of Afro-Pessimism

Afro-pessimism takes as one central starting point the observation that a specific form of racism has targeted people racialized as Black in the United States since slavery, through the Black Codes, forced prison labour, and Jim Crow segregation all the way to today’s ‘New Jim Crow’ and the ‘neo-slavery’ of the Prison Industrial Complex (Alexander 2012; also James 2005; Blackmon 2008). Taking up Lewis Gordon’s claim that we live in an ‘antiblack world’ (Gordon 1995), Afro-pessimism assumes that U.S. society is fundamentally built on and structured by this anti-blackness which has made it possible to arbitrarily enslave, imprison, harm, and kill people racialized as Black for centuries. Anti-blackness is therefore understood as inherent to U.S. society and entails violence which Wilderson describes as ‘ontological and gratuitous’ (Wilderson 2003: 229) or ‘metaphysical’ violence (Douglass and Wilderson 2013: 122) directed against people racialized as Black not contingent on any prior transgression (see Wilderson 2010: 17–18).[3]

In his ground-breaking film study Red, White, and Black: Cinema and the Structure of U.S. Antagonism from 2010, Wilderson focuses on the structural positions of people racialized as Indigenous, white, and Black inside and outside of U.S. civil society. Rather than the experiences and performances of those three groups of people, he is concerned with the structures that have assigned them different positions with respect to civil society and have constituted U.S. civil society as fundamentally white supremacist and anti-black. In accord with Saidiya Hartman’s contention that today is the ‘afterlife of slavery’ (Hartman 2007: 6), Wilderson argues, first, that ‘Black’ still means ‘Slave’ (Wilderson 2010: 7) or ‘prison-slave-in-waiting’ (Wilderson 2007: 18). Second, he contends that ‘white’ refers to the ‘senior … partners of civil society’ (Wilderson 2010: 38). Third, Wilderson describes other groups of people subordinate to the ‘white’ but who fall out of the category of ‘the Black,’ such as immigrants of colour and to some extent Native Americans as ‘the junior partners of civil society’ (ibid.: 28).[4] In this argument, the white ‘senior partners’ are located at the centre of civil society, their ‘junior partners’ at its inside margins, and Black people are positioned ‘outside of Humanity and civil society’ (ibid.: 55).

Wilderson explains the locating of Blackness at ‘the outside of Humanity and civil society’ with Patterson’s description of social death in slavery as ‘generally dishonored,’ ‘open to gratuitous violence,’ and ‘void of kinship’ (Wilderson 2010: 10–11; see, also, Patterson 1982). On this basis, Wilderson supposes that it is not legitimate to analogize between Black people who are positioned as socially dead outside of civil society and non-black people who are positioned civilly alive inside civil society. All attempts would fall prey to what he calls the ‘ruse of analogy,’ ‘erroneously locat[ing] Blacks in the world — a place where they have not been since the dawning of Blackness’ as well as mystifying and erasing the ‘grammar of suffering (accumulation and fungibility or the status of being non-Human)’ that Blackness entails in this argument (Wilderson 2010: 37). This is also why Wilderson describes the relation of Blackness to the world and ‘the Human’ (who is defined as not Black) as ‘antagonistic’ (ibid.: 5, 26), while the ‘junior partners’ have a dialectic and agonistic relation to civil society that leaves room for negotiation, no matter how small this room and the chances to have claims admitted might be.[5]

Wilderson’s argument that the relation between Blackness and the world should not be understood as a resolvable conflict but as an incommensurable antagonism inextricably linked with the constitution of the white, male, ‘Western’ subject makes Afro-pessimism one of the most challenging and radical trajectories of U.S. Black Studies in recent years. If we consider this complex argument in relation to border conceptualizations, however, we may conceive of the antagonistic demarcation — between Blackness as social death outside of civil society and non-blackness as civil life inside civil society — as a distinct border concept not previously analysed as such. In fact, Wilderson uses the metaphor of a fortress built around civil society against Blackness to make the argument that ‘Anti-Blackness manifests as the monumentalization and fortification of civil society against social death’ (Wilderson 2010: 90). The structural bordering also becomes apparent when Wilderson explains that gratuitous violence ‘against Blacks’ lives’ is necessary ‘to actually produce the inside-outside [of civil society]’ (Wilderson, von Gleich, and Spatzek 2016: 15). The border that demarcates the inside from the outside defines what ‘humanness’ and the subject concept mean by delimiting ‘the Human’ — or ‘the genre of Man’ (Wynter and Thomas 2006: 24) — from the ‘non-Human’ at the expense of the subjectivity of people racialized as Black by, in other words, ostracizing them beyond the realm of ‘the Human.’ This epistemological demarcation is absolute because it has not allowed any kind of movement across the border and no relation between the two sides other than as a structural antagonism with respect to Blackness.

The absoluteness of this border is also reflected by the ways in which it is supposed to have withstood any attempts to change its position and structure since its erection as part of the transatlantic slave trade. The changes that have taken place in the United States, for instance through the Civil Rights and Black Power movements, do not figure in the ‘conceptual framework’ (Wilderson 2010: 10, 57) and on the level of abstraction Wilderson calls for in his work. In fact, from an Afro-pessimist perspective, those endeavours have not fundamentally changed the structural positionality of Blackness outside of civil society other than as what Jared Sexton (2011: 5) has called ‘permutations.’ Since the socially, culturally, and historically important changes have taken place on the level of experience and performance, Wilderson and Sexton would argue that they have not disconnected Blackness from ‘Slaveness’ on a structural level (Wilderson 2010: 11). According to this argument, the constitutive nature of the demarcation of Blackness as ‘Slaveness’ from ‘humanness’ for civil society makes any form of change inside civil society seem futile in terms of structure. To align it with the register of the border, the changes have happened within civil society and have therefore not effectively dismantled the epistemological border structure that has enclosed civil society and demarcated it from Blackness understood as the outside of civil society — or, more precisely, making Blackness civil society’s outside.

Contact Zones and the Border to Social Death

Having established the ‘Black border’ between Blackness as social death outside of civil society and non-blackness as civil life inside, one may wonder in what ways the concept differs from other border concepts developed in American cultural and literary studies, such as Mary Louise Pratt’s ‘contact zone’ (1991; 2008), Gloria Anzaldúa’s ‘borderlands’ (1989), Homi K. Bhabha’s ‘third space’ (1994), and Walter Mignolo’s ‘border thinking’ (2000). Indeed, at first glance the ‘Black border’ exhibits commonalities with all four. All seem to use spatial tropes to conceptualize the relation of differently racialized people and their (im)possibilities in terms of dwelling and thinking as well as communicating within a specific epistemological space. Relations between these groups are rooted in colonialism and slavery, and their ongoing legacies are still affected by these origins. While some concepts, such as Pratt’s ‘contact zone,’ construct borders as generally contingent, dialectic, and permeable, the ‘Black border’ I consider in Afro-pessimism appears absolute, antagonistic, and impermeable with respect to Blackness. In order to illustrate this, let me briefly compare and contrast the two.

The contact zone is well known within and beyond cultural and literary studies for its conceptualization of a space of cultural contact across asymmetrical power relations in the long aftermaths of colonialism, the transatlantic slave trade, and slavery in the Americas and the Caribbean. First coined in her essay ‘Arts of the Contact Zone’ and further developed in her study of European eighteenth and nineteenth century travel writing in Imperial Eyes: Travel Writing and Transculturation, Pratt (2008: 4) defines contact zones as ‘social spaces where disparate cultures meet, clash, and grapple with each other, often in highly asymmetrical relations of domination and subordination — like colonialism, slavery, or their aftermaths as they are lived out across the globe today.’ Pratt conceptualizes (post-)colonial cultural contact and communication between the (former) colonizers and the (former) colonized and enslaved (ibid.). As she shows in her analysis of Guama Poma’s writing, Pratt understands this contact as a form of forced conversation on unequal grounds in which ‘the subordinate peoples’ find ways to talk back and self-represent through ‘transculturation’ and ‘autoethnography’ (Pratt 1991: 36). In this way, the contact zone takes on the issue of resistance to subjugation and the role knowledge production and dissemination plays in this context. It therefore refers less to a specific geographical location and more to an improvised interpersonal and epistemological space for communication and interaction in the (post-)colonial world. The space the two parties enter is hierarchically structured, but it still leaves room for ‘the subordinate’ to negotiate with ‘the dominant’ and therefore also presupposes (a limited form of) agency on the side of the former.

Juxtaposing the contact zone with the border concept proposed here, the term contact already implies a relation that the ‘Black border’ seems to forbid with its assumption of a structural antagonism between Blackness and the world. By foregrounding the possibility of negotiation in a highly asymmetrical space, Pratt assumes that even though different groups of people do not possess the same position of or to power, they can still enter, live in, communicate across, and occupy the socio-symbolic space of the contact zone. Thus, it seems not too far-fetched to compare the position of ‘the subordinate’ in the contact zone with the position of Wilderson’s non-black ‘junior partners’ located at the inside margins of U.S. civil society. From this point of view, contact zones could be found within civil society as spaces where Wilderson’s ‘junior’ and ‘senior’ partners negotiate across asymmetrical power relations, whereas Blackness positioned as ‘Slaveness’ would provide the basis for these negotiation processes by enclosing civil society with the ‘Black border.’[6]

Fugitivity against the Border

But how can we grapple with Black sociability that happens against all odds on the other side of the border, where social death seems to deny Blackness any leeway for negotiation in or with civil society? If we look at the ‘Black border’ that condenses the Afro-pessimist arguments outlined above, there seems to be no place in Afro-pessimism or on the ‘Black border’ to apprehend the everyday lives of Black people and their battles and negotiations in the United States other than to consider them as being ‘permutations.’ This is because they figure on the level of experience with which Wilderson’s conceptual framework seems hardly concerned. Nonetheless, scholars such as Saidiya Hartman and Fred Moten — whose work appears closely related to but arguably different from Afro-pessimism as developed by Wilderson — have attempted to mutually address Black sociability and the structural position of Blackness in the ‘afterlife of slavery.’ Interestingly, both draw — to different extents — on the long history of Black fugitivity to do so (see Hartman 2007; Moten 2009).

In a similar vein, the historian Tina M. Campt also draws on the concept of fugitivity in her landmark monograph Image Matters (2012) to examine the ways in which Black diasporic photography participated in community and identity formation in a hostile environment that negated Blackness. In her study of vernacular photography of Black German families (1900–1945) and portrait photography of ‘African Caribbean migrants to postwar Britain’ (1948–1960), Campt addresses the broad question of ‘how do black families and communities in diaspora use family photography to carve out a place for themselves in the European contexts they come to call home?’ (Campt 2012: 14). Campt puts the concept of fugitivity to direct use in her analysis of ‘snapshot’ photographs of the lives of Afro-German families in Nazi-Germany. Her image analyses reveal the ways in which the ‘fugitivity of these photos lies in their ability to visualize a recalcitrant normalcy in places and settings where it should not be’ (ibid.: 91). The images practice a form of fugitivity by displaying and thereby (re)creating spaces of private refuge for Black German subjects in Nazi Germany. Consequently, in her preceding discussion of definitions of the term fugitive, Campt explicitly includes those who ‘cannot or do not remain in the proper place, or the places to which they have been confined or assigned’ (ibid.: 87). Thus, for Campt, the images challenge us ‘to see in [them] everyday practices of refusal, resistance, and contestation’ (ibid.: 112) of and against ‘the very premises that have historically negated the lived experience of Blackness as either pathological or exceptional to white supremacy’ (Campt 2014: n.p.).

Admittedly, relating Afro-pessimism concerned predominantly with the structural positionality of Blackness in the United States to a concept of fugitivity developed with respect to vernacular photography of Black diasporic life in Europe seems quite a stretch — not only across different levels of abstraction but also across diverse geographies and histories. Nevertheless, when we juxtapose the ‘Black border’ in Afro-pessimism being proposed here with Campt’s concept of fugitivity, we may imagine **fugitivity** as conceptualizing the ‘lived experience of Blackness’ as **constant** practices of ‘**refusal’ to accept** and to remain within **the structural**ly ostracized **position of social death**. Fugitivity could then be understood as a constant running up against ‘Slaveness’ that — instead of successfully crossing or overcoming the ‘Black border’ — still remains on the outside of civil society where social death is located. In fugitivity, Black freedom as the supposed end of social death may be expressed and experienced, for instance through photography, but only as ‘Fugitive Dreams’ as the title of Hartman’s last chapter of Lose Your Mother suggests (Hartman 2007: 211), without ever reaching a position from where to lay claims to civil society that has defined freedom as ‘not Black/not Slave’ for hundreds of years. In this way, fugitivity as a figure of thought enables us to accept the structural antagonism Afro-pessimism poses **as well as reflect on** the **strategies** and expressions **of Black survival**, perseverance, **and sociability** in an anti-black world, **with the latter being unaccounted for in Afro-pessimism** and exemplarily analysed in Campt’s work.

Yet by imagining fugitivity as running up against social death, I cannot help but fall back on the assumption of some form of Black agency in relation to the ‘Black border’ and the civil society it encloses, a ‘capacity’ that the concept of social death problematizes in Wilderson’s framework (Wilderson 2010). No matter how tentatively I weigh my words to describe flight and the struggle to survive social death, the concept of fugitivity still demises to the fugitive some ‘capacity’ to act as a subject or agent. The question of agency — obviously inseparable from Black social life and arguably incommensurable with social death — **appears as a central fault line when attempting to grapple with** Black sociability and **social death** across the levels of structure and experience.

The supposed agency attached to the concept of fugitivity appears, however, reasonably different from the constrained agency of ‘the subordinate’ that the concept of the contact zone adopts. While Pratt would deem it possible to negotiate with and self-representing against Wilderson’s white ‘senior’ partners towards change, the fugitive practices of refusal and the ‘stealing away’ of the socially dead assume a more indeterminate form of agency. In fact, an Afro-pessimist analysis of the structures that position Blackness as social death outside of civil society **implies an utter lack of** symbolic **agency in relation to that society.** Within this framework, fugitivity might merely comprise the capacity to flee and struggle against the border between social death and civil life, without causing more than reverberations of the otherwise intact border structure. Moreover, under the auspices of Afro-pessimism, the fugitive’s running up against the border of social death from outside civil society is not a matter of choice but rather appears as the crux of Black social life doomed to social death. Understood in this way, Black sociability entails the capacity to survive, live, and struggle, using Campt’s words, in places ‘where it should not be’ (Campt 2012: 91) and by extension seems almost congruent with fugitivity in social death.

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

#### One – no 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.

#### Two – – 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.

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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.

#### Three – contingent agreement is good: negating the whole aff makes only the most extreme stances 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 stances of the 1AC. There are net benefits to this Alt other than just the Condit cards. It applies to other frames that we’ve critiqued.

## case

### 1nc – presumption/solvency

#### The 1AC is heavy on diagnosis and light on remedy. There’s a diagnosis of identity and violence, but little discussion of how the Aff re-distributes privilege. Aff alone does not alter macro-structure that undergird violence.

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

### 1nc – thesis

#### An ontological political thesis is *Defensively* wrong because of *contingency*. It’s *Offensively* violent for three reasons – *hurts agency*, *causes material tradeoffs*… and *idealizes Alts* - *worsening the ethical condition it critiques*.

Beveridge ‘17

et al - Dr Ross Beveridge is a Professor of Urban Studies and an Urban Studies Foundation Senior Research at the University of Glasgow. Article Title: “The post-political trap? Reflections on politics, agency and the city” – Urban studies, Jan 2017 edition - First Published October 25, 2016 – Research article – Modified for language that may offend – Obtained via Sage Database - #CutWithRJ - http://journals.sagepub.com/doi/abs/10.1177/0042098016671477

This article argues that while the post-political city thesis has a broad-brush potency, it is important to know and fully consider the implications of this perspective on urban politics. To do this, we provide a three-part critique of the post-political thesis. First, we highlight problems with the ontological claims about politics made by Ranciere and others, arguing that the binary conception of the political/politics as police order is too narrow a basis to capture the contingencies of actually existing urban politics. Second, the constricted but universalised understanding of the political/politics reduces the realm of political action, denying the plurality of political agency apparent in the urban sphere. Third, we show that Swyngedouw's assertion that urban politics is experiencing a post-political historical condition suggests an omnipresent and omnipotent order. As well as lacking an empirical basis, such claims arguably diminish the possibilities of the urban as a political space of resistance and emancipation the very features which provide the foundation to counter post-politics in the city. Ultimately, the 'post-political trap' refers to the compelling, yet ultimately confining account it provides critically-minded researchers of contemporary urban politics. We conclude the piece by proposing ways of re-aligning the field of enquiry. In particular we argue not for a rejection of the post-political perspective but a more plural understanding of politics and depoliticisation, one that better accounts for contingency and the continuing multiplicity of political agency in cities. There is a need, we conclude, for a more fundamental discussion about urban politics per se (what it is, what we would like it to be), and not just in relation to the post-political thesis itself.

The post-political thesis

Notions such as the 'post-democratic' (Crouch, 2004), 'post-politics' (Mouffe, 2005) and the 'post-political' (Ranciere, 2009) speak of a contemporary democratic condition in which genuine contestation and conflicting claims about the world are not apparent. Such theorising rests on the understanding that the post-Cold War period has witnessed a new political and economic settlement centred on the norms and interests of the global market, and an intellectual climate and governance structures in which a fetish for consensus has foreclosed proper political debate (Zizek, 2008). The general thrust of this post-politics, post-political literature is that the political realm has been hollowed out or that the political itself has disappeared (e.g. Ranciere, 2003; Mouffe, 2005; Zizek, 2008), that the parameters of political discussion and political action have narrowed to preclude alternatives to neoliberalism (e.g. Crouch, 2004). Political apathy, citizen cynicism and (economic) elite control behind the facade of formal democratic political systems are central concerns, as is the commensurate rise in populism and political protest around the world.

These arguments have been translated by Swyngedouw (e.g. 2007, 2009) into thinking on cities. He observes an urban politics reduced to consensus, excavated of the truly political, constructed through empty signifies like the 'global city' or the 'creative city'. All that is left in this (formerly) political realm is the management and policing/policy-making of the consensus (Swyngedouw, 2010). It is one in which political decision making is virtually pre-ordained, led by global public-private administrative elites, where the outcomes of policy-making - what is possible, desirable and who should be included and excluded - are virtually known in advance (Swyngedouw, 2007). Consequently, truly political action finds exasperated expression in urban political violence from the margins.

Swyngedouw has certainly succeeded in transforming the debate on urban politics (see MacLeod, 2011). His work should be praised for prompting dispute, for bringing a new edge to critical thinking on 'governance', for provoking us to re-think the city politically and to consider afresh the nature and scope of contemporary urban politics as well as the possibilities and means for achieving change.

But is he entirely right? If he is, the normative implications are devastating not only for urban politics but, given the political and economic significance of cities, for national democratic systems in their entirety. Through the post-political ~~lens~~ (thesis), institutional cornerstones securing the legitimacy of contemporary politics are nothing but a charade to obscure the hidden interests benefitting from and guiding policies, while radical and reformist efforts made within established institutions will always be ineffective and, even worse, only serve to further embed the post-political order.

Something of a lament for the demise of the socialist alternative, the post-political narrative is steered by leftist political persuasions, but even for those who share these sympathies there are problems. The thesis that urban politics is monolithically post-political, post-democratic or depoliticised has, correctly, been challenged (e.g. Darling, 2014; Larner, 2014; McCarthy, 2013; MacLeod and Jones, 2011: footnote 19). In what follows, our arguments are not novel, but we believe that taken together they contribute to a more considered understanding of a notion (the post-political or post-democratic city) that is increasingly used, almost as short-hand, to describe the ills of contemporary urban governance.

More than meets the (post-political) eye: A three-part critique

The strength of an academic concept lies largely in its focus and its ability to encapsulate concerns shared by a diverse set of academics. The (the) post-political thesis certainly fulfils these conditions. For empirical research it is helpful because it opens a window to power in urban politics. From this perspective, urban politics might be distorted not only because the interests of powerful agencies are systemically privileged over those from deprived groups but because some conflicts never occur and some ideas and actors are systematically foreclosed. However, we argue that there is a problematic understanding of the relation between the 'political', processes of depoliticisation and the empirical effects of depoliticisation.

The purity of the 'political': Reducing actually existing urban politics to police order

For all the potency of the post-political city thesis, it suffers from the understanding that the truly political exists only in moments, and that post-politics is the default position of contemporary democracy (Swyngedouw, 2011, 2014: 175 177). This stark, binary ~~view~~ (perspective) relies most heavily on the thinking of Ranciere, who insisted 'on the impossibility of the institutionalization of democracy and, consequently, on the abyss between any instituted order (the police) and the democratic presumption of equality (the political)' (Swyngedouw, 2011: 376). As Swyngedouw (2007: 605) points out, 'Ranciere's political philosophical mission ... is to re-centre the "political" as distinct from "policy" (what he calls "the police")7. Synonymising actually existing politics with the police was of course a deliberately political move by Ranciere, one designed to deny contemporary political systems the very essence of their claims - to provide for the political and ensure democracy.

Following Ranciere, writers employing the post-political label generally understand true political actions in terms of gestures, interventions and polemic scenes (as practiced by the Spanish Indignados and the Occupy movement, amongst others). Here, the political is an antagonistic moment that questions or challenges existing orders, ways of doing things, enshrined spatialities and normalised social relations; it 'disrupts the established order of things' (Dike£, 2012: 674) and provides new political imaginaries enabling public contestation and deliberation. In this ~~view~~ (perspective), the political emerges rather than having a proper place; the political moment is spontaneous and *pure* (Uitermark and Nicholls, 2014; cf. Mouffe, 2013) and challenges the boundaries between 'the political’ and 'the apolitical'. As a consequence, the political is short-lived and by implication cannot be long-term, institutionalised or gradual - the political act is the backroom door being knocked down, bringing to a shuddering halt the politics ongoing behind. The political is not articulated through elections or other processes of 'actually existing instituted (post-) democracy' (Swyngedouw, 2014: 171). The *political* can only ever be apart from the state and political system and hence is not to be found in parliament or meeting rooms but on the street or square.

This conception implies a sharp division between a true and pure moment ('the political') on the one hand and blurred and affirmative forms of actions ('politics') on the other. This binary conception insinuates that the political is 'truly' political only in the sense that it might subvert the existing order of things and the established hierarchies of power. By definition, only the discrete and scarce political has the potency to effect real change. In this view, politics per se is not political and is even the mobilisation of the apparatuses of the political system against the emergence of the political (Swyngedouw, 2014: 170 171). Subjects, actions and ideas are not political unless they fulfil the ideal of the democratic articulation of claims.

The problem with this perspective is twofold. First, it often remains unclear if statements are made on ontological or ontic grounds (Marchart, 2011), Second, the empirical consequences of adopting these positions are problematic.

The post-foundational theorists (e.g. Ranciere, Mouffe, Badiou, etc.), from whom Swyngedouw draws his inspiration, share the common idea of the political difference (Marchart, 2011) that differentiates between the political as the constitutive element of our social world and politics as everyday, real-world conflicts addressing those social relations.1 The political can, then, be perceived as an ontological category whilst politics (or police order) is an ontic actualisation of the political. Both terms operate, hence, on different analytical levels. They do not delimit different terrains on the same map. Rather the political defines the cartographic principles of the map while politics delimits the areas of conflict on the map. They do touch, however. Obviously the political shapes the conflicts that may or may not come into focus and, in reverse, politics, the phenomenal world of political action, influences the way we build our fundamental sense of the social world. Important as the political difference is in post-politics studies, the analytical implications of the political difference are not always carefully considered (Marchart, 2011).

It the political and politics do not belong to the same analytical register, it is impossible empirically as well as normatively to judge or evaluate the radical or emancipatory quality of actually existing politics by comparing it to philosophical arguments about a distinct definition of the political as an ontological category. If you do so, politics is always disappointing and deficient. Presumably, this is also the reason why there are so few empirical studies investigating the political quality or character of political actions or the historical genesis of the alleged post-political order. If Grand Politics is not from this world and everything else is already tainted by post-politics there is, in effect, nothing left to study. Hence, the notion of the post-political trap once enticed in, there is nowhere else for argumentation to go.

Yet, in the real world, there appear to be many actors who have an interest in challenging the existing order of things and some of those engage with or work within the so-called police order. To say this is not to reject outright Ranciere's understanding of the political but rather to insist that his claim is an ontological rather than an empirical one (resting on the need for revolutionary change and the way in which that change occurs) and that other ontologies of the political shed a different light on what politics might be. For example, we might follow those scholars who have focused on the associative dimension constituting the political, with the work of Hannah Arendt (1958) being emblematic here. According to Arendt, people create a political domain by acting and speaking in plurality in the presence of others and thus creating a space of appearance. By and through the political, people are liberated from their private identities and appear as public subjects. Intersubjectivity and the associative power of the political are keys to this understanding. The actors who actually create this space of appearance represent a segment of the population or the public without formally being mandated to do so. They are not elected, but they act in the name of a large collectivity or social group. They signify a particular public in the sense of dar-stellen, even though they do not represent (vertreten) this public (see Kohn, 2013). The creation or staging of a collectivity unrepresented before is, from this perspective, a genuine political act. It opens up new opportunities for distinct, even emancipatory forms of subjectivications.

There is a link here to the emerging literature on mobilising concepts of representation. Disch (2011: 104) argues, for instance, that 'it is only through representation that a people comes to be seen as a political agent, one capable of putting forward a demand'. The associative perspective on the political emphasises the performative effect of collective action. Long-term, backbreaking work within political institutions *can make a difference* to some ~~citizens~~ persons.

Hence, the binary understanding of the political vs. politics as police order can and should be problematised with regard to the analytical level it speaks to - the ontological or the ontic. Instead of just deducing an historical condition we seem to live in from reflections on the ontological foundations of politics, we argue that urban post-politics or depoliticisation is an empirical puzzle and should be treated accordingly.

Shrinking political agency: True politics and political agency can only be rare and random

However, from its ontological foundations, the second constrictive element of the post-political trap becomes apparent: the conceptual understanding of political actions. The post-politics perspective does not deny the continuing contingencies and contestations of power relations (e.g. Swyngedouw, 2014: 168 170) but rather casts political agency solely as a revolutionary act (Darling, 2014: 74-75). Hence it portrays genuinely political agency like the genuinely political itself as inherently in opposition to agencies within actually existing politics/the police order. Politics is seen as populated by managerial nobodies, encased in the apparatuses of market-oriented, state-enforced consensus. In short, there is not much of a spectrum of political agency. Indeed, the realm of possibilities, the potentialities and plurality of agency are reduced to the heroic (the Mibcgalitarians'), anti-heroic (the amorphous post-political subjects)2 and demagogic (the populists profiting from the lack of politics).

The mundane, the small, the gradual, the reformist and conservative lose their political import - they are post-political, their agencies intrinsically part of the reification of the post-political apparatus.

According to this view, even radical urban activism in the register of 'polities' (i.e. concerned with concrete social-spatial interventions) reproduces rather than undermines the post-political condition:

Such expressions of protest that are framed fully within the existing police order are, in the current post-politicising arrangement, already fully acknowledged and accounted for ... They are positively invited as expressions of the proper functioning of 'democracy', and become instituted through public-private stakeholder participatory forms of governance, succumbing to the tyranny of 'participation'. (Swyngedouw, 2014: 177)

Presumably, then, Swyngedouw would dismiss the call centre workers campaigning for better wages in our fictionalised account as not acting in a truly political way. As he states, 'the political is not about expressing demands to the elites to rectify inequalities or unfreedoms' (Swyngedouw, 2014: 174). True political agency does not engage with political systems, the existing police order. Rather, like some of the Occupy movements, it confronts them by denying them, by ignoring their conventions. In his most recent work on urban post-politics, Swyngedouw (2014) spends some time dismissing the interventions of contemporary urban activists, who engage in the 'micro-politics of local urban struggles' against environmental pollution, for example (Swyngedouw, 2014: 176). Ultimately, their actions are seen to elevate the social and the particular to the political realm and thereby impinge upon its true emancipatory potential (Swyngedouw, 2014).

This has potent normative and theoretical implications. The conception of a pure, grand and true political leads to the idealisation of radical interventions not only from grassroots leftist movements but potentially from all political strands. Furthermore, if there is nothing left apart from the radical gesture, what moral, political and strategic options remain open to actors? Mouffe (2013) takes issue with those radical scholars (and activists) who propose a withdrawal from all existing institutions, a rejection of representation and the goal of establishing majorities. She argues that this avoids the realities of political power, which is always territorialised (i.e. it emerges within concrete settings). Strategies to overcome forms of hegemony must engage with visible nodes of power, which ultimately are apparent in existing institutions of politics (and the police). If not, radical politics denies its political potential and reproduces the very post-political condition it wants to attack by not directly engaging with the institutions of power through which it operates.

But it is precisely this form of 'urban insurgency7 that Swyngedouw (2014: 174) privileges as political, as having the potential to get us out of the post-political quagmire. Hence, it is the staged and symbolic actions of many of the Occupy movements of 2011 and the Spanish Indignados to which we should turn to research the genuinely political and radical in urban governance. Regardless of the merits of these forms of agency, this is an extremely narrow conceptualisation of political agency. And it is one that allows us little hope of breaking free from the post-political condition, precisely because it is so specific in its conditions and hence seldom in its occurrence. While a legit-imate argument could be made that genuinely radical political acts do occur so rarely, it is more problematic to equate them - and only them - with the political. As a consequence, and this is the second element of the trap, a post-political perspective on the city entails viewing the agencies of many - if not the overwhelming majority of political movements, organisations and agencies that operate on the local scale as not being political because they employ different strategies to resist oppression.

Omnipresent and omnipotent The post-political condition

Allied to this narrow conception of the political and political agency is a heavily structuralist account of the post-political arrangements which deny the political. Swyngedouw's arguments about contemporary urban conditions can only hold through the presumption of omnipresent and omnipotent structures. Herein lies the third element of the trap - the post-political city is a theoretical point of reference rather than an analytical conclusion on the basis of detailed and coherent empirical ~~observations~~ (investigation). The post-political condition is too often presupposed as a matter of fact rather than interrogated as a matter of concern (Larner, 2014: 192).4 It might be argued that for the thesis to truly hold, the condition has to be presupposed. As stilted above, if we depart from the assumption that politics is fundamentally anti-political and we are experiencing a post-political age, it is easier to explain away the disappointments and deficiencies we inevitably come across: they are the result of the truly political to emerge. The actual operations of the post-political, along with a vast range of political agencies, fall outside of the theoretical lens, are not accounted for in the thesis.

Hence, this is, then, a field of urban research dominated by theoretical assertions, lacking in empirical research - a sense of actually existing post-politics. And it shows. The literature on post-politics is dominated by the description of meta-level discourses and ultimately relies on the analysis of structures rather than agencies. As Raco and Lin (2012: 195) have observed, even if urban 'policy agendas appear to take on postpolitical forms and rationalities, this does not necessarily mean that very real divergences and conflicts have been, or can easily be, eradicated’.

Swyngedouw argues that the post-political is a condition, globally occurring, part of the contemporary urban fabric. Even according to its own reading of the age, however, there is a politics to the post-political condition - neoliberalism - and the key features of this condition (e.g. mainstream political consensus around the market interests of the global economy) are ongoing political achievements (Dean, 2009: 23). Perhaps this *contingency* explains why it seems hard to pin down post-politics (and research) in urban contexts. Raco and Lin (2012) go on to make the point that urban agents of post-politics are nowhere to be seen in much of the literature; and hence the very specific local forms post-political constructs like sustainability take are difficult to explain. Rather, the discourse and the police apparatuses, with their ability to reproduce globally, are sources of explanation. Post-political arrangements are omnipotent and omnipresent. They also appear to be fairly unchanging. Much is assumed about the fixed nature of political agendas, top-level institutional level decision making and all sorts of backroom, behind closed-door interactions. As a consequence, the literature has a certain fatalistic tone. Post-politics tends to happen to people, who occasionally react with radical reassertions of the political but generally do not. As Crouch states, there is ultimately little reason to act given the small likelihood of achieving change: 'Under the conditions of a post-democracy that increasingly cedes power to business lobbies, there is little hope for an agenda of strong egalitarian policies for the redistribution of power and wealth, or for the restraint of powerful interests' (Crouch, 2004: 4, cited in Swyngedouw, 2011: 371).

Depressingly, there may be a lot of truth in this. However, this does not mean that researchers should deny the likelihood of change or, moreover, in the case of Swyngedouw (following Ranciere), prescribe the way in which it will occur (via the heroic radical). Nor should they make ontological (or ontic) and conceptual claims which effectively negate the political import of multiple forms of agency, institutions and ideas, as well as much hope, before they even appear. Therefore, while we agree that the post-political thesis is potent in capturing the spirit of the current political malaise, especially depoliticisation in formal politics, it does present a rather monolithic view, one which exists more convincingly on the theoretical than the empirical plane.

Diminishing the urban as a political space

Far from the common imaginary of the city as a vibrant political space, the post-political city thesis portrays the urban as a bleak depoliticised terrain. Indeed, it questions the symbiosis between the city and politics. The difficulty this presents is not that the literature completely denies the ongoing contingency of urban space, of particular places, but that it marginalises the possibilities for the political contestation of and in the city. Through its assertion that there is a post-political urban condition, the possibilities of the city, or 'spaces of hope' (Harvey, 2000) within the city, are diminished. The urban police order is universal and all-encompassing, the urban political is isolated and random. In a sense, the thesis, taken to its logical conclusion, undermines the understanding of the city as a site of struggle and possibility as well as compliance and fatalism. If truly political agency is seen exclusively, in that it must exist outside of the urban post-political order, and if 'political space is a space of contestation inaugurated by those who have no name and no place1 (see Swyngedouw, 2014: 178), then the potential of the urban to foster true politics shrinks. Ultimately, the post-political city thesis seems to deny the potential of many of the forms of urban politics and agency with which its proponents might normally sympathise.

Saving the city: Researching depoliticisation, avoiding the post-political trap

Surely, it is better on empirical and ontological grounds to adopt a more open ~~view~~ (perspective) of the potential of the city as a place of struggle and a site of (radical) political agency. The urban as a heterotopia (Foucault, 1967/ 2008), both phantasma and concrete place, yields political agency through specific conditions for subjectivation. So to think of the true political space as a universal space produced and shaped by placeless agents denies the political potential of cities as distinct social formations. Of course, cities are pivotal to the global economy as generators of wealth and nodes in trade and communication. They have become prime sites of neo-liberal 'accumulation through dispossession' (Harvey, 2003), the concentration of wealth through privatisation and commoditisation of public assets. Urban politics is starkly shaped by the depoliticising effects of global change. However, urban struggles of many hues have been very apparent (e.g. in 2011), and the dialectical intensity of global-local interconnections in cities provides opportunities for the (local) contestation of global processes. Hence, as we observe cities gain importance around the globe, in terms of population, of social cohesion, of economic value and political struggle, we would expect sites of contestation to multiply as ever larger parts of the population start to live and work in cities. Hence it is necessary to account for the increasingly contested nature of the city globally, to focus on struggle and conflict, without referring to very specific recipes of how urban contest and politics should occur.

### 1nc – antitrust turn

#### Anti-Trust Education is valuable AND TVA’s solve the historical inaccessibility of legal change and are prerequisite to AFF efficacy

Greer and Vallas 21 (**Jeremie Greer**, Co-Founder and Co-Executive Director at Liberation in a Generation, a national movement support organization building the power of people of color to totally transform the economy, Soros Equality Fellow, racial justice activist who began his career as a community organizer in the Columbia Heights and Shaw neighborhoods in Washington, DC, and national policy expert on the causes and the policy solutions to close racial wealth gap, formerly working at the Government Accountability Office, the Local Initiative Support Corporation, and Prosperity Now (formerly CFED), MPP George Mason University, BA Social Work, University of St. Thomas, currently working on an Executive Education Certificate in Nonprofit Leadership from Harvard University’s Kennedy School of Government; interviewed by **Rebecca Vallas**, senior fellow at The Century Foundation, work focuses on economic justice, formerly spent seven years at the Center for American Progress, built and lead CAP’s Poverty to Prosperity Program, and helped to establish CAP’s Disability Justice Initiative, the first disability policy project at a U.S. think tank, as well as the organization’s criminal justice reform work, her policy and advocacy work flows from her years as a legal aid lawyer, representing low-income individuals and families at Community Legal Services in Philadelphia, creator and host of Off-Kilter, a nationally distributed podcast about poverty, inequality, and everything they intersect with, JD University of Virginia, BA psychology, Emory University; “Reimagining Anti-Monopoly Activism Through Racial Justice — feat. Liberation in a Generation’s Jeremie Greer,” Off-Kilter Podcast, 3-26-2021, https://offkiltershow.medium.com/reimagining-anti-monopoly-activism-through-racial-justice-feat-e3a124c1c61)

VALLAS: So, before we get into the report — and there is so much to talk about in this report — you co-founded Liberation in a Generation with Solana Rice, as I mentioned, up top. Talk a little bit about the organization’s vision, its mission. You talk a lot about an oppression economy and a liberation economy being the goal that you’re working to build towards. Talk a little bit about why you co-founded the program.

GREER: Yeah. Thanks for having me, and thanks for that question. Yeah, Liberation in a Generation, it’s really kind of a culmination of Solana and I (Solana Rice, my co-founder) and I really working. You know, originally, both of us have a similar background. Mine is in doing community organizing in the early part of the 2000s, but then also doing a lot of national work at the policy level for kind of Washington think tanks. And it really was birthed because we were really dissatisfied with the model at which a lot of national advocacy organizations were taking to how they were doing racial and economic justice work. And our kind of governing theory of change is that one, the ideas are not bold enough to actually deliver on changing the problems that we were seeing, that the story that we were telling about why these problems were created was actually just wrong, and that we weren’t working with the people that were building the type of political power that’s necessary to make that change. So, we launched Liberation in a Generation.

And what we hope to do is to dismantle what we call the oppression economy, which is an economy that is built on an uncomfortable truth: that racism is profitable in our economy, that institutions can build their wealth, that people can build their wealth based on the existence of systemic racism. And that happens by criminalizing people of color, by operating a dual financial system that extracts from people of color, that our political system and all of its inequalities is meant to prop up this racist economy that we operate in, and that corporate power has too much of a hold over the well-being of people of color in our economy. And that what we need to replace it with is a liberation economy that does real basic things like provides for everyone’s basic needs, creates safety and security, that compensates people for the value that they bring to the economy. And our economy has too long excluded people, but we need an economy that ensures that all people of color belong. And that has to be grounded in a set of economic rights that everybody has and holds and can be entitled to. And that, again, leaders of color that are doing grassroots power building and community organizing are the ones that deliver it. So, that’s who Liberation in a Generation partners with to deliver that future.

VALLAS: Well, and hearing you mention that you’d experienced, and I think very justifiable, dissatisfaction with the way that some of the kind of traditional Washington-based think tanks work on these issues, right? Often it’s about cutting poverty or reducing homelessness, right? And just the contrast with some of what you at Liberation in a Generation and Solana and the team that you guys are building there are, the things that you’re pushing for, right, are just on a different scale. And in some ways, it’s about helping people understand that maybe we can imagine a different world rather than just tinker at the edges.

I want to read another paragraph from this report. You write, “Imagine a world where the unemployment rate for people of color is zero, the unhoused rate for people of color is zero, a world in which 100 percent of people of color have quality healthcare, a livable wage, quality education. We at Liberation in a Generation,” you write, “believe that this is possible if we strive to create a liberation economy where all people of color have their basic needs met, are safe and secure, are valued and fully belong, including people of color who are immigrants, formerly incarcerated, LGBTQ, and have a disability. You finally write, “In order to get to this liberation economy, we must dismantle the oppression economy that monopoly power has colluded with the government to maintain.” And this gets us into really talking about the topic in this report, which is anti-monopoly activism.

Start with a little bit of a primer of what we’re facing. I mentioned a couple of stats up top in the intro helping put sort of a recent and updated lens on how good it is to be a monopolist these days, right? By contrast to everybody else who’s living through this pandemic and not experiencing billions and trillions of dollars of wealth increases. Start with a little bit of a primer of what we’re facing: the rise of unchecked capitalism and monopoly power such that we’re essentially living in a new gilded era, as the report argues.

GREER: Yeah, and just, I mean, you have to, to fully understand the power of, monopoly, you have to understand it through the lens of people of color who have to deal with it. So, in Iowa, and, you know, there’s folks with People’s Action that are organizing people in rural communities around the threat of monopoly. But if you’re looking at Iowa, a corporation like Tyson Foods has managers who are sitting around on the floor (and this is documented in the media) making bets about what worker was going to get sick and die from COVID. Like, the inhumanity of that, I think, is just appalling. But it just shows the dehumanization that monopolies have created for workers, for consumers, for small businesses, and everybody that’s impacted.

And the reason why is because at the core, monopoly power is about exactly that: power, who has it and what they do with it. And what we have when you have monopolies, it’s not just about the size of the firm. There’s a lot of focus on the size of the firm. But what it’s really about is does that firm have a disproportionate amount of power, and what are they doing with that power? And what monopolies today are doing — Amazon, Moderna, Pfizer, JPMorgan Chase, Bank of America, Wells Fargo, Facebook, Google — they’re taking the power that they have around consumer prices, around workplace conditions, around wages, around the impact that they have in community, and the influence that they have on government, and they’re using that power to profit off of blatant systemic racism that is falling down upon Black and brown workers. And that is, for us, the real fight that we feel when you look at monopolies. And that the current system in which we use to try to govern monopoly power is totally inadequate in dealing with the kind of impact that the monopolies have on Black, Indigenous, Latinx, and Asian-American people in this country.

VALLAS: Now, folks who are listening probably all assume that they know what a monopoly is. But I’m going to sort of poke a hole in that and say, you may think you know what a monopoly is. But Jeremie’s got a slightly broader, and I think, more updated definition that’s used in this report. How do you define a monopoly for purposes of what you guys are doing in this work? And why do you propose a somewhat broader definition?

GREER: Yeah. So, you’re right. The current kind of anti-trust definition of a monopoly really focuses on the impact that monopoly power or corporate power has on consumers, and particularly on consumer prices. So, will you pay more for a product because of the monopoly power that a company has? And as I mentioned, we believe that that’s totally inadequate to really understand the full breadth of what a monopoly is. Monopolies have, yes, they have incredible control over consumer markets and prices. And we see that in healthcare, you know. So, the price of insulin is much higher because of the monopoly power that a company, that pharmaceutical companies hold.

But monopolies also have power over worker wages, the working conditions in which workers show up to work and have to live through. They have incredible power over small businesses. All across the country, we see small businesses being crowded out by monopoly power. They have the political power to almost dictate to local communities how much they’re willing to pay in taxes, which means the crowding out of essential services that are provided to communities. And what we observe in the report is that too often, the impact of that monopoly power falls squarely on the shoulders of people of color, whether they’re workers of color, consumers of color, whether they’re small business owners of color, or whether they’re just people of color living in communities that are looking to their local government to really help them navigate life in the economy.

VALLAS: And I want to quote you, because you offer, I think, a really, really smart definition here in the report. You say, “We define monopoly as a corporate entity — a single corporation, or a group of corporations — whose sheer size and anti-competitive behavior grant it disproportionate economic power and governing influence.” And as you’ve been describing, you say, “This negatively affects the well-being of workers, consumers, markets, local communities, democratic governance, and the planet.” That’s a somewhat broader definition than maybe the sort of technical antitrust definition of monopoly. But for all the reasons you’re starting to get into, you really, you argue in this report that it’s necessary that we think a little more broadly and a little more functionally about who’s operating like a monopoly, and therefore where we need to be thinking about challenging unchecked corporate power.

You’ve already started to delve into the link between unchecked corporate power, monopolistic behavior, and the numerous types of racial injustice and structural racism that run rampant throughout the U.S. economy and our broader society. But you have a very powerful way that you phrase this in this report. You say, “Racial wealth inequality,” and you specifically are talking there about racial wealth inequality, “is the consequential disease caused by the oppression economy.” I can’t remember reading another publication about monopolistic behavior and the need for an anti-trust movement that draws such a direct causal link between monopolies and the ways that they operate, and racial wealth inequality and structural racism. Talk a little bit about how monopolies are contributing to the immense and historic levels of racial wealth inequality that folks are maybe more familiar with, but not aware of that link.

GREER: Yeah. No, thanks for that question. And what I think of an important distinction around the framing there is that, yes, it is driving, monopolies are driving racial wealth inequality. And yes, monopolies are a product of an oppressive economy that is, you know, where racism is baked into the design of the economy. But they’re also a profit tier, they are gaining profit from the existence of that oppression economy. So, it is in their interest to sustain it and maintain it and to keep it going. And an example that we draw out in the paper that I think is so important and I think really illustrates this is, as we mentioned, one of the pillars that holds up the oppression economy is the criminalization of people of color. That people of color as criminals, or defined as criminals, and mass incarceration, the over-policing of Black and brown communities is something that upholds this oppression economy. And then when you have a company like Amazon who purchases the Ring Corporation —

And for those that may not be familiar, Ring is a product that’s provided by Amazon in which they provide surveillance and home security to everyone. You can get a little Ring doorbell where someone rings the door. You could be at work, you can open it. It’s like, “Oh, cool. Leave my package there.” That’s how they market it. But what that does is that that Ring device pulls in a lot of data. And what we have is cameras in homes all across the country that can be used to surveil people. And what we know is one of the things that police do is they over-surveil Black and brown communities, which leads to the type of mass incarceration that we’ve seen in this country. Well, Amazon has contracts, in fact, 770 contracts with police departments so that they can get the data from those Ring devices. So, I think that really illustrates that not only are monopolies driving racial inequality through the low wages that they pay workers, through the way that they crowd out Back businesses, from the way that they treat immigrants at the workplace, but they’re also actively doing things to prop up and uphold this oppression economy because they are profiting from it.

VALLAS: And I really want to encourage folks to read the report, especially activists and advocates who I know we have lots who listen to the show, folks in grassroots-based work who I think are really going to find this report very much geared towards them. That’s another really, I think, significantly unique aspect about what you guys have done here. This isn’t the kind of think tank report that you traditionally read, right? In a lot of ways, you actually really wrote this for, and almost to, grassroots leaders of color as sort of a primer on anti-monopoly activism, but also as something of the beginning of a tool kit that really could help people start to take this on as part and parcel of their work. I’d love to get a little bit into kind of why you structured the report this way, why you took this somewhat different approach in writing, not just for the media and for policymakers and for the Washington elites, but actually for grassroots leaders of color on the ground.

I’m going to quote you again. You write, “This paper aims to contribute a major step in the long journey of bridging the divide between anti-monopoly researchers and policy advocates and grassroots leaders of color.” And you write, “The first step on that journey is knowledge.” What does the current anti-monopoly fight look like? And why do you believe, and Solana as well, why did you guys prioritize bridging this divide?

GREER: Yeah, so, as I mentioned in my opening about Liberation in a Generation, we believe that the leaders that are going to lead us into having a liberation economy and dismantling this oppression economy that we’ve been talking about are grassroots leaders of color who are building power in communities. And the reason why we believe that is one, they are closest to the people who are experiencing the pain and harm of systemic racism. They are in there with them, they understand, they hear their stories, and they’re organizing them for change. The other thing that we believe is so important is that they are in the business of building the power, the political power, of those people. They’re not there to serve them, which there’s people that do that. And there’s a reason for that, and it’s important. But they see their role in helping those people build power so that they can have the agency to force their government, whether it’s a local, state or federal, to act on their behalf.

And we believe that if one of the government’s roles is to curb corporate monopoly power, they should be the ones driving that change. Because they will come with experiences, which we try to reflect in the report, of how monopoly power is impacting communities. You know, how a Amazon distribution center in the Inland Empire in California is impacting not just the economic life, but the quality of life of people in those communities. They could speak to that in real terms. And that not only does the advocacy need to be informed by that, but also the policy making needs to be informed by that.

So, what we did was, with that kind of assumption, we went to groups like the Athena Coalition, who is organizing people against Amazon across the country. We went to Color of Change, who’s an organization that is focusing on curbing the power of big tech: Facebook, Amazon, Google, Apple. We went to ACRE: Action Center for Race and the Economy. And they’re doing a lot of work focusing on big banks and the corporate and monopoly power of big banks. And we said, you know, what is holding the kind of grassroots movement back from really diving in, into this anti-monopoly issue? And they came up with, there was a lot of reasons, a lot of varies they identified, and some of them that we’re working with them to solve.

But one of them was, you know, we don’t have kind of a global understanding of how monopoly power impacts people of color in particular. We understand it through the lens of a particular firm, Amazon, Bank of America, like that. But we don’t really have a good grounding in how it happens globally. Therefore, our policymaking doesn’t have kind of an eye towards how could we globally and kind of more broadly address this problem in a way that impacts people across the economy? So, that’s what we hope that this paper would do: would provide that kind of grounding for grassroots leaders so that they can begin to build the type of strategies that kind of have that massive economy-wide impact for people of color.

VALLAS: And it might be eye-opening for grassroots leaders who are learning about this issue, who are exploring whether this is something that they can get involved with. But it’s also potentially eye-opening for people who already think they know the antitrust movement or the anti-monopoly movement, given that it is incredibly rare, as you point out, for conversations about the economy to really discuss human impacts. They’re often extremely technocratic conversations, right, that have lots of facts and figures and jargon. But something that you really make a point of doing in this report, which I can’t say I’ve ever seen in a report on monopoly power or anti-trust, is you really walk through the human impacts on people of color as workers, as consumers, as residents in local communities, as small business owners and entrepreneurs, and also as subjects of surveillance, similar to the Amazon Ring concerns that you were raising before. Share some of the examples in the report of those kinds of human impacts on people of color who can obviously be more than just one of those things in that list of categories.

GREER: Yeah, I’ll share a couple. There’s one that really, I mean, really broke my heart when I first read about it was Alec Raeshawn Smith, whose mother — and this is something that’s in the media. So, it’s not as if I’m violating any confidentiality here — but Alec Raeshawn Smith, whose mother, he aged off of his mother’s insurance plan. And this is a story we heard a lot during the ACA kind of debate and the debate around universal healthcare. But he aged off of his mother’s insurance plan, and he made this diff-, had to make this difficult choice about whether he continued to allow his mother to bear the burden of his insulin medication that he needed to regulate his diabetes, or whether he would try to do it kind of on his own. And he determined, he decided to do it on his own. And it’s a hard decision that people have to make every single day, but the cost of that insulin was so high that he was rationing it, that he wasn’t taking what the doctor prescribed. And he passed, and he died from his diabetes.

And this is the type of story that we see all too often. You know, his insulin costs were $1,300 a month without insurance. And we see that a corporation that can control pricing of pharmaceuticals for a lifesaving drug like insulin is how this plays out in real life. And we can get into a law, you know, you can get into a law classroom or into a debate on Congress, and you can start to forget about the real lives that are impacted by these policies. And the reason why we wanted to talk about these stories is because that is what organizers are dealing with every day: They’re working with people that are on insulin, you know. They are working with people who are working at a Amazon fulfillment center. They’re working with people who can’t get a bank account because Bank of America has all these fees on their credit cards and their checking accounts and things like that. So, bringing these stories out is what is going, and this real human impact, is what is going to mobilize, we believe, the type of effort that’s needed to fight back against monopoly power.

VALLAS: And I think we’ve got time for a few more examples, because it just, it isn’t the part of the conversation that usually gets any airtime. And it’s part of why I wanted to have you on the show is really to put a human face on some of the impacts. Share a few more examples that really, that popped for you as you were pulling this report together.

GREER: Sure. I’d love to talk about John Ingram, who is a Black farmer in Jackson, Mississippi, and he’s a chicken farmer. He grows chickens, and he sells his chickens to Koch Foods, K-o-c-h Foods. And they are the fifth largest poultry company in the country that provides food to places all across the country. But the model which they work with John is very much in the model of the sharecropping model from post-Civil War and on into the Jim Crow era. You know, they determine the way in which John must run his farm, like to how much he feeds his chickens, to the types of facilities he keeps his chickens in, all the way to the price that they will pay to buy his chickens. And what this does is create incredible power over Black farmers like John. And what you have is — And this is pretty much allowed to take place by the USDA.

He had complained, and Black farmers, many Black farmers complained to the Obama-era USDA. And because of the power of those poultry monopolies — you know, I mentioned one in the beginning, Tysons and Koch is another — they really didn’t do anything. And what we see across the country are Black farmers being forced out of business because of the power that these monopolies have.

Another example that I think is really good is also in Mississippi. There’s a Nissan plant that was built in Canton, Mississippi. They relocated there. And they had gotten there because they had gotten a lot of tax breaks from the local government, from the state of Mississippi. And they did so with the promise of good jobs. They talked about jobs would be between $26 and $26 an hour. Well, the type of jobs that they provided were called perma-temp jobs. And these are basically permanent temporary jobs, which I can’t really wrap my mind around what that is, because those are conflicting. Like, what is something that’s permanent and temporary? But they created these jobs that were permanent and temporary, which basically meant that they could at will fire people from their jobs.

So, these aren’t real sound jobs. The wages were low. They did not get great benefits. So, a lot of the promise that was offered was not delivered upon. And that these were primarily the jobs that were provided in this part of Mississippi, despite the millions in tax breaks that Nissan got from, again, the state of Mississippi and the local government there.

VALLAS: And there’s so many more examples throughout the report. We’ve got a link and show notes so folks can go in and can sort of page through. It’s written in an incredibly accessible way, right? So, I want to just make that point. You intentionally set this up so that you don’t have to be a lawyer to read this. You don’t have to be a deep antitrust expert to be able to read this. This is actually really for people who might be a little bit newer to the issue.

And one of the big kind of frames of the report as well is you spend a lot of time discussing how, you know, hey, we know folks are busy. We know folks are fighting a lot of fights right now and probably don’t feel like they’ve got one more to take on, space for one more to take on. But you really make the point that for folks who are working on, say, advancing the Green New Deal or the Homes Guarantee or other policies within the social and the economic and the racial justice advocacy sphere, you really make the point that challenging monopoly power is actually a prerequisite to succeeding in those other fights. What’s your message to advocates and to activists and policy folks, anyone who’s listening or who might read the report, what’s your message to them about why they should see the anti-monopoly fight as their own, even if they feel like that’s not the space that they work in?

GREER: Yeah, I mentioned Action Center for Race and the Economy. Mo BP-Weeks, who is a co-director there, often says, You just have to follow the money.” And I think organizers know that when you follow the money, you usually find exactly the targets that you need. And there’s a section in the report called Monopoly Power Is Corporate Power Magnified and Maximized. And we believe, and I think that we’re right, that if you focus in on and treat these monopolies like corporate entities, you can begin to see change in a lot of the transformative movements that people are having, for example, the Green New Deal and efforts to create a more equitable and healthy environment and to curb climate change. You know, the targets are Big Oil and Big Energy. And those institutions, while they’re large, still operate like corporations. They have a CEO, they have Board of Directors, they have shareholders. And all of those people have some stake in the company and have some culpability to the issues that you are trying to solve. So, it becomes another tool in the toolbox.

We believe that anti-monopoly advocacy is just another tool in the toolbox that could be used to curb corporate power so that you can begin to get wins on other issues that you may be focusing on, whether it is the environment, whether it is affordable housing, whether it’s creating higher wages for workers, whether it is to create a safer community free of police violence. We think that by focusing on curbing the monopoly power of the corporations that are causing that pain is just another tool that can be used in the advocacy for those broader kind of movement priorities that we hear a lot about.

VALLAS: Now, one of the things that you and I have talked about a good amount before, and something that we actually get into a lot on this podcast, is the narratives that are out there that we’re often sort of fighting against that might be invisible, but that shape people’s views about, say, the economy and economic policy, even if they’re not aware that that’s the sort of lens that they’re looking through or the pair of glasses that they’re looking through. It’s also something that you really spend a lot of time working on. And it’s very, it’s central, really, to a lot of what Liberation in a Generation is advancing, is narrative change, right? Especially dismantling, for example, the neoliberal narratives that are really at the root of so many of the social injustices that folks who listen to the show are out there fighting every day.

You talk about government, in the case of the anti-monopoly fight, as a villain and as complicit with corporations in allowing unchecked corporate power to do the damage that you’ve been talking about, that we’ve been discussing up to this point. But you actually talk about them in the context of the anti-monopoly fight government as the villain who could turn into the hero. Talk about why you think it’s so important to construct a narrative with a villain, with a hero. And we’ll get back now into kind of the policy conversation of this, why government has the potential to turn from being a villain to being a hero in this context.

GREER: Yeah, I mean, it’s really, when you look at the history of anti-monopoly advocacy, you see that there once was a time where the government was an active participant in curbing corporate power and was doing so on behalf of workers. You know, you see there were passages of transformative legislation like the Sherman Act or the Clayton Act or the Federal Trade and Commissions Act. And these were all passed in the early 20th century. And they were meant to curb this kind of corporate monopoly power in, you know, back in the Gilded Age when we saw the trust corporations, the railroads, the Carnegie steel industry. And there was this active role of government doing this.

But what we’ve seen since then is, as corporate power grew, begin to influence government more, a real devolution of that activist role the government played. And what we began to see really, you know, and probably the heyday of this for the monopolies began in the 1980s and continues on today, was actual collusion between the government and these monopolies. And that what we saw, what we see today is there have been, there were more mergers and acquisitions under Obama administration than any other administration before it. So, we’re at the point now where the government is really seen as a, it’s really a collaborator in building monopoly power.

What we need to get back to is a place where the government is playing its role in making sure that not just the, it’s not just about the size of the company, but that the company’s power is not getting to the point where they’re bringing down the standard of living for workers, particularly Black, Latinx, Indigenous, and Asian-American workers. That consumers are seeing the type of prices so that they can afford the things that they need to live a daily life. That small businesses, particularly Black businesses, are not being crowded out. And that that is a role for government. So, government can be the hero, and it should be the hero because it is our government, you know.

We are a democracy. We should have say, each and every one of us, in what our government does, and our government should be working on our behalf, not on behalf of Jeff Bezos, Warren Buffett, or Elon Musk. We should be expecting the government to play that active role, and not just recognizing that it should be done for all workers, but ensuring that workers of color in particular and people of color, households of color in particular, are being protected against the tyranny of monopoly power.

VALLAS: And one of the later chapters in the report really offers kind of a primer in some of that early 20th century history that you were just summarizing around the time when government in the U.S. actually did take action to rein in monopoly power. You mentioned the Sherman Act and the Clayton Act and the creation of the Federal Trade Commission, all of that, I would encourage folks to go in and read. And there’s probably a lot that folks don’t know about that era following the gilded era, that really was the time when the federal government in the U.S. did actually take action to check corporate power. Who are the key players with power in the federal government to do something about this? And what are some of the existing solutions that are being advanced?

GREER: Yeah. So, today, I mean, it’s your Congress, of course, has a lot of power. Because there’s an, I believe, there’s a need for new kind of legislation that new powers be created, new constructions of how we regulate monopoly that only Congress could do by passing laws. But under our current laws, the Federal Trade Commission is responsible for responding and kind of being the first, the cop on the beat to make sure that companies aren’t violating any of our current antitrust laws. They can issue criminal and civil penalties, and they are the ones who are in charge of enforcing those kind of monumental legislation that we’ve talked about.

The Justice Department also has a important role in moving legislation forward. In fact, they are the entity that when you hear about breaking up corporations, the Justice Department is the one that usually does that. And they’ve done it in the past. You know, they did it. They broke up the big railroad monopolies of the past, and they broke up AT&T in the 1970s into what they call the Baby Bells. And they currently have a lawsuit today against Google to look at Google’s monopoly power. And in the lawsuit, there’s a call for breaking it up into smaller pieces. So, there’s that.

And then there’s other agencies, you know. As it relates to banking, it’s the Department of Treasury with the Comptroller of the Currency and the Federal Deposit Insurance Agency, the CFPB in banking. In agriculture, it’s the U.S. Department of Agriculture. In energy, it’s the Department of Energy and the Environmental Protection Agency. Each of these industries kind of have their own government entity that is responsible for regulating the work that they do. And they play a role in curbing corporate power. And one other one that I’d mention is states. State Attorney Generals also have a lot of power to curb corporate power, because one thing that’s little known is that states are the ones that incorporate corporations. And so, they have a lot of ability and a lot of power to regulate agencies.

As far as solutions go, there’s a lot of solutions that are kind of out there. And what this report does not do is propose to put forth a particular solution that would work for people of color, because we actually think that that’s the work that grassroots leaders of color should embark on in the future, is designing and developing those particular solutions. But some of the solutions that we have in our toolbox today are, for example, breaking up large corporations. That is something that we can do today. We can also regulate, tightly regulate corporations using the existing tools in the toolbox. The CFPB and what it’s done in the banking industry is a good example of that.

But one idea that’s been batted around, and I think Elizabeth Warren proposes for big tech in particular, is new enforcement agencies that are more in line with the realities that we see in the economy today and the way in which monopolies form. A lot of our laws are meant, were developed to regulate railroad and steel monopolies, and those aren’t the monopolies that we’re seeing today. So, there is a group of folks out there talking and saying that there’s a real need to think about new agencies with new authorities that could regulate monopoly power.

VALLAS: And of course, it’s not exactly a pie-in-the-sky idea to think about creating those new agencies. Elizabeth Warren, who you mentioned, right, was the godmother of the Consumer Financial Protection Bureau, the CFPB, which is pretty young as far as federal agencies go. It was created during the Obama years. Although that may feel like a different lifetime at this point in a lot of ways.

We’re going to run out of time. But the last couple of minutes that we have, I’d really love to spend delving into the recommendation that really is, in a lot of ways, the kind of central call of this report. A lot of it is really addressed to grassroots leaders, and for the reasons you’ve discussed, right, about bridging that divide. But it’s also addressed to the existing anti-monopoly tent: the folks who are already working within research and advocacy spaces on these issues. And you say very pointedly, “The anti-monopoly movement, within research and advocacy spaces especially, should embolden grassroots leaders of color to deliver anti-racist policy solutions aimed specifically to curtail monopoly power.” So, there you’re describing that agenda that you think grassroots leaders really should be centered in developing. But you continue. You actually, you sort of raise the ante with this call. You also say, “It’s not enough to speak virtuously about racial equity and economic justice. We have to intentionally center people of color in the development of policy change.”

And you call explicitly for a reimagination of this movement through a racial justice lens that broadens the tent and intentionally makes this work more accessible and more human-impact focused so that it’s not just about bringing folks in and centering the work differently. It’s actually about doing the work differently, entirely, so that it’s not just that technocratic and sort of small-tent D.C. elite approach to changing these policies. Talk a little bit about what that actually would look like. You have some pretty specific ideas that, I agree with you, would actually transform the anti-monopoly movement in ways that would reimagine it and approach the work differently. Get concrete. What would that actually look like?

GREER: Yeah, and thank you for this question, Rebecca. You know, I mentioned that history. And I think what we know about public policy and the history of public policy in the United States, whether it was this antitrust movement in response to the Gilded Age, whether it was the New Deal, is that when it’s done in a race-neutral way, it doesn’t just leave people of color behind — Black, Indigenous, Latinx, Asian Americans — it also harms people of color. And what we need to do is, of course, what we can learn from that history is that we should not repeat it. And we should not repeat it, by centering people of color as the core beneficiaries of the policy. Because we believe if that is done, not only will they be served, but we will all then be served because we’re ensuring that we’re not leaving anyone behind, and we’re not intentionally harming anyone. And we think that that’s so critically important in this kind of new era of antitrust policy that could come forth.

You know, we talk about this renaissance of antitrust back in the early part of the century, but at the time, many Black people could still not join a union. Many, many Black people could not get jobs in these new corporations that were being formed by the railroad, by the breaking up of the railroads. So, we have to acknowledge that the implementation of policy and ensuring that all people are a part of it are critically important. And we believe that no one is better at that than people that organize, that are in fellowship, and work with people of color every single day closest to the problem can do. And that that knowledge that they have, that expertise that they have in those folks’ lived experience, is exactly what policymakers need to craft the type of policies necessary. It is what the think tanks in Washington need. It is what the policymakers on Capitol Hill need. It is what the entire advocacy apparatus needs. And we would like to see that being applied to this area.

But what that means is not bringing people to the table in a kind of like, you know, tell us what you think, and then we’ll get back to you. We actually believe that those folks should be leading those conversations. They should be leading the crafting of that policy. And that the role of the think tank or of the policymaker or the antitrust lawyer should be to support them in that endeavor, but with them at the helm. And we think that that is critically important in all areas of policy, but especially in this one that has been so technocratic, so legalistic, so academic, and really devoid of many of the lived experiences that people have navigating the economy and fighting back against these monopolies.

VALLAS: And you’ve got some really, really, really concrete and tangible recommendations in there that I feel like if researchers or Hill staff or think tankers are listening — and I know that’s a lot of the folks who listen to this show, too — there’s stuff in there that folks can just literally put on their to-do list, like creating measures that actually assess impacts on Black and Latinx and Indigenous and Asian and Pacific Islander people, right, as they’re actually thinking about how we evaluate solutions.

GREER: Right.

VALLAS: Or you also call for just using less jargon and less abstraction and focusing maybe a little bit less on just like the markets and the efficiencies and all of those terms, right, in favor of talking a little bit more about the impact of corporate decisions on people, human people, right: the folks that are actually at the core of why we need to be challenging corporate power.

GREER: Think bold. Think big. We need to think big. We need to think boldly. We can’t get caught up into the minutia of what can get done today. We need to think big about what could happen tomorrow. So, yeah, that’s another one. Mmhmm.

#### Historical examples of violent uses of antitrust is our argument – it’s a tool to reallocate power – and reverse causal – failure to pressure it toward justice causes similar uses for injustice

Newman 21 (John Mark Newman, Professor of Law, University of Miami School of Law, formerly practiced with the U.S. Department of Justice Antitrust Division as an Honors Program trial attorney, fellow with the Thurman Arnold Project at Yale University, JD University of Iowa College of Law, BA Iowa State University of Science & Technology, “Racist Antitrust, Antiracist Antitrust,” The Antitrust Bulletin, 7-26-2021, DOI:10.1177/0003603x211031675)

Abstract

If the tumultuous 2010s yielded one consistent theme, it is frustration with inequality coalescing into collective action. In response, progressive enforcers and commentators have begun to explore whether the antitrust laws—enacted in an attempt to counter concentrated power during a previous Gilded Age—might play a role in addressing systemic racialized inequality. This essay contributes to that ongoing conversation by historicizing a pair of antitrust cases: Knights of the Ku Klux Klan and Superior Court Trial Lawyers Association. The first is an admirable example of antiracist antitrust. The second is its opposite. Together, these two decisions represent divergent paths. Which has the contemporary antitrust enterprise followed? The Supreme Court’s most recent substantive decision in the area, Ohio v. American Express, suggests both room for hope and reason for concern. The essay concludes by offering four recommendations for how antitrust can retake the high road. Antitrust can and should help to address—rather than exacerbate— structural inequality.

Keywords

antitrust, antiracism, structural racism, inequality

The United States is slowly rediscovering politics. A decade-long experiment in laissez-faire policymaking has failed to correct societal inequities—much the opposite.1 If the tumultuous 2010s yielded one consistent theme, it is frustration with inequality coalescing into collective action.2 Multiple progressive political movements arose, each in its own way a response to the persistent effects of systemic inequality. Each is a call to wake up to the reality of how power has been apportioned and used—and, all too often, malapportioned and misused.

One might think antitrust law would have something to say about all of this. The earliest antitrust statutes were enacted during the late 1800s, at the height of the first Gilded Age of inequality in the United States.3 A broad-based coalition of workers and independent farmers, frustrated by the rapid consolidation of economic power in railroads, steel, and a host of other sectors, decided to push back. Their crowning achievement was the Sherman Act of 1890.4

Although various stakeholders have long disagreed about its goals, antitrust law is by its nature a tool for allocating and reallocating power.5 Enforcers and commentators have recently begun to respond to contemporary political movements by raising the possibility of using antitrust as a partial means of redress for systemic racism and economic inequality. Commissioner Slaughter suggests consciously incorporating racial inequity into enforcement prioritization decisions.6 That, in turn, could translate into a more active role for antitrust in blocking mergers and acquisitions and other business conduct.7 Conversely, Vaheesan calls for antitrust enforcers to stop intervening on behalf of powerful employers against workers, especially when those workers are disproportionately people of color.8

This essay attempts a modest contribution to this nascent body of commentary on antiracist antitrust.9 It does so by historicizing a pair of cases, one well-known, the other less so. This “compare and contrast” methodology is used frequently in antitrust discourse. When discussing antitrust’s goals, for example, two cases—United States v. Topco and Reiter v. Sonotone—are often presented as bookends for the 1970s. In his opinion for the majority in Topco, Justice Thurgood Marshall described the Sherman Act as “the Magna Carta of free enterprise, ... as important to the preservation of economic freedom ... as the Bill of Rights is to the protection of our fundamental personal freedoms.”10 By decade’s end, the Supreme Court’s tone had changed considerably—in 1979, the Reiter Court referred to the Sherman Act as a relatively humble “consumer welfare prescription.”11

But a change in goals does not always yield an immediate change in implementation—put another way, choice of an end does not necessarily dictate the choice of means. The pair of cases discussed below frame the 1980s, a decade in which antitrust’s end was fairly static, yet its means were still in flux. The first, Knights of the Ku Klux Klan (“KKK”), stands as one of the clearest, most admirable examples of antiracist antitrust in U.S. history. The second, Superior Court Trial Lawyers Association (“SCTLA”), is its opposite: the Sherman Act being deployed against an attempt to ensure adequate legal representation for indigent defendants, most of them being people of color.

Taken together, these two cases represent divergent paths. Which has the contemporary antitrust enterprise chosen to follow? The Supreme Court’s most recent substantive decision, Ohio v. American Express(“AmEx”), suggests both room for hope and reason for concern. With the latter in mind, the essay concludes by offering four recommendations for how antitrust can retake the high road. By avoiding overemphasis on categorical labels or particular types of effects, and by recentering a focus on power, the antitrust enterprise can play a vital part in addressing—and avoid exacerbating—structural inequality.

A. Knights of the KKK: Antiracist Antitrust

After the U.S. military exited Vietnam in 1975, millions of Vietnamese, Laotian, and Cambodian people fled the region.12 Rapid congressional action facilitated emigration to the United States for many of these displaced persons.13 Many settled in coastal Texas, a designated resettlement site that offered a familiar opportunity for sustenance: fishing and shrimping.14 Unsurprisingly, the refugees’ integration into the local economy was met with hostility on the part of incumbents. One antiimmigrant tactic was political: at the behest of the Texas Shrimp Association, the state legislature passed a bill in early 1981 that imposed a 2-year ban on issuing new shrimping licenses.15

But in the towns and cities along the Gulf coast, nativist locals were unsatisfied with what they perceived to be a half-measure by the state legislature. Boat merchants began charging premium prices to Vietnamese immigrants.16 Bait shops refused to sell to them.17 Rumors flew, with some locals suggesting the new shrimpers were being subsidized by the U.S. Government.18 Incumbents suggested the new entrants were overfishing and underpricing.19 A shaky cease-fire agreement was drawn up but quickly fell apart after the Federal Trade Commission warned that it violated the Sherman Act.20

In January 1981, one of the nativist locals met with Louis Beam, a Grand Dragon of the Knights of the KKK,21 to present the concerns of “a group of American fishermen.”22 The Klan moved swiftly. At a rally held on Valentine’s Day in Santa Fe, Beam warned the crowd that it “may become necessary to take laws into our own hands.”23 The Grand Dragon went on to invite attendees to train at Klanorganized “military camps,” inveighing that it would be necessary to “fight, fight, fight” and see “blood, blood, blood” for the salvation of the country.24 Beam vowed to give the newcomers “a lot better fight here than they got from the Viet Cong.”25 The crowd watched a demonstration of how to burn a boat and later a cross.26

On a clear day in March, a shrimp boat owned by one of the long-term residents was seen carrying men garbed in the traditional white robes and pointed hats of the KKK. Most were visibly armed, and the boat had been fitted with—and was firing—a cannon.27 Locals reported receiving threats that those who did business with Vietnamese immigrants would be viewed as “enemies.”28 A woman who had allowed an immigrant-owned fishing boat to use her docks was issued a warning: “You have been paid a ‘friendly visit’ do you want the next one to be a ‘real one.’”29 Klansmen burned crosses in the yards of immigrant shrimpers,30 set their fishing boats ablaze, and firebombed a home.31

Meanwhile, in Alabama, the cofounders of the Southern Poverty Law Center had been closely monitoring the Klan’s activities.32 In April 1981, Morris Dees and Joseph Levin filed a wide-ranging lawsuit in federal court, seeking to enjoin the Klan’s reign of terror. Judge Gabrielle Kirk McDonald, the first African American judge in the state of Texas, was assigned to hear the case.33 The defendants called for her disqualification, referring to her supposed prejudice against the Klan. Beam publicly called her a racial slur.34 Throughout the entire proceedings, Judge McDonald and her family received death threats and one-way tickets to Africa.35

Among the fourteen counts pleaded were violations of Sherman Act § 1 and § 2.36 The § 1 claim formed the core of the antitrust case: plaintiffs alleged that the defendants—the Knights of the KKK, Beam, various anonymous members of the Klan, the “American Fishermen’s Coalition,” and several individual fishermen—had conspired “to force the Vietnamese fishermen class to terminate or at the very least curtail their commercial fishing business in the Galveston Bay area” and to try to “intimidate them into selling off sixty percent of their shrimping boats.”37 The conspiracy’s goal, per the complaint, was to “eliminate or reduce competition” for incumbent fisherman in the area.38

After granting class certification, Judge McDonald issued a preliminary injunction ordering the defendants to cease their campaign of violence, threats, and intimidation. The imbalance of societal and material power was subtly—and effectively—emphasized throughout Judge McDonald’s opinion. Facts were presented without embellishment; they spoke for themselves. The reader learns, for example, of a Vietnamese shrimp seller who testified that “six weeks ago two American men drove up in a truck and pointed a gun at her” and that “her husband will not take out their shrimp boat on May 15, 1981 because she is afraid that he will be killed.”39

The antitrust analysis is notable for its clarity and brevity—indeed, to the contemporary observer, it is perhaps most remarkable for what it does not say. Although Judge McDonald began by stating that “the anti-trustlaws” forbid a “lessening of competitive conditionsin the relevant market,” she went on to explain that plaintiffs could prove such a “lessening” by demonstrating an actual marketplace effect.40 No formal market definition was required. Nor did the opinion engage in a protracted attempt to fit the defendants’ conduct into a particular analytical category before deciding on the appropriate legal treatment.41 Again, proof of actual harmful effects was sufficient, at least to receive a preliminary injunction. In August, the court made the injunction permanent and ordered it to be posted publicly in the Gulf Coast area.42

B. FTC v. SCTLA

SCTLA was another antitrust lawsuit targeting coordinated activity, but the similarities began—and ended—there. While Knights of the KKK was championed by civil-rights attorneys, SCTLA was the brainchild of a hard-right-wing economist.43 In fact, the latter was filed against a group of publicinterest attorneys. Knights of the KKK exemplifies antitrust being used to counter coordinated power on behalf of displaced persons enduring personal and structural racism. SCTLA, on the other hand, exemplifies an antitrust enterprise oblivious to power imbalances and structural racism.

James C. Miller III, President Reagan’s first appointee to chair the Federal Trade Commission, was the first nonlawyer ever to hold that position.44 Miller’s doctoral studies were completed at the University of Virginia’s economics department under James Buchanan, dubbed by some “the Architect of the Radical Right.”45 Buchanan had a controversial track record on racial issues—his academic center, formed amid Virginia’s “Massive Resistance” to federally mandated school desegregation in the 1950s, was pitched as a means for preserving the state’s “social order” and stymieing the “increasing role of government in economic and social life.”46 Buchanan was, according to Miller, one of his chief intellectual influences in the field of economics.47

One of Miller’s first actions as FTC chairman was to request a budget cut and a 10% reduction in personnel.48 Unsurprisingly, the Agency’s enforcement activity also plummeted. In just two years, antitrust actions dropped by nearly one-third, and consumer protection actions by more than onehalf.49 But one particular type of litigation bucked the downward trend. Miller spearheaded an enforcement initiative aimed at professional associations—and he “particularly liked the idea of bringing some cases against lawyers.”50

The District of Columbia in the 1970s was a majority-minority city; over 70% of residents identified as Black.51 More than 100,000 D.C. residents fell below the poverty line, with poverty rates exceeding 30% in some census tracts.52 In a 1963 decision, the U.S. Supreme Court had held indigent defendants in criminal cases are constitutionally entitled to adequate representation.53 D.C., like many jurisdictions, complied with this mandate via a dual system comprising a government-funded public defender’s office and court-appointed private lawyers.54 The District’s public defenders handled just 8%–10% of indigent defendants, leaving court-appointed lawyers to take up the considerable slack, a situation “unique among major urban jurisdictions.”55

Despite the pressing need for quality representation—and despite runaway inflation rates throughout much of the 1970s—statutory rates for court-appointed work in the District stayed flat for more than sixteen years.56 The D.C. Bar and the Judicial Conference of the D.C. Circuit released two reports finding that low compensation rates forced existing courtappointed lawyers to take on too many cases and dissuaded other attorneys from taking on any cases.57 As the first report explained, “[A] system which is heavily weighed against the indigent defendant in terms of the compensation that [their] attorney will receive raises serious questions of equal protection. The indigent’s rights under the Constitution are no less than the rights of the well-to-do.”58

Fed up with the situation, a group of court-appointed lawyers formed the SCTLA as a means of exerting political pressure. After initially casting about for the right tactical strategy, the Association was inspired to launch a strike by a suggestion from the dean of Howard University Law School: “[Y]ou will have to raise hell about this to attract somebody’s attention.”59 The D.C. Government— ostensibly the intended “victim” of the planned stoppage—was supportive. At a meeting with Association lawyers, Mayor Marion Barry tacitly encouraged the strike, as he was “very sympathetic” to the cause.60 And, once launched, the strike yielded rapid results: the City Council voted to increase funding, thereby improving the “quantity and quality of representation received by ... indigent clients.”61

Meanwhile, the Miller-helmed FTC had also been busy, opening an investigation into the Trial Lawyers Association before the strike had even begun.62 On December 16, months after the strike had concluded, the Commission proceeded with a complaint against the lawyers’ association and its four individual leaders. No practicable remedy was sought.63 The local government had already voted to increase funding and, despite being the ostensible “victim,” had neither asked the FTC to intervene nor sought to enjoin the boycotters under its own local antitrust authority.64

Rather strikingly, FTC staff internally recognized that the Association’s lawyers could not possibly have wielded market power. The Superior Court had the legal authority to order any member of the D.C. Bar to represent indigent defendants.65 In fact, it had done just that during a prior strike in 1974.66 Thus, the target of the strike could have simply ordered the attorneys to resume representation, ordered nonstriking attorneys to take on indigent clients, or both. The “victim” wielded all of the power.67

Nonetheless, the FTC pursued the case all the way to the U.S. Supreme Court, which roundly censured the strike. (Justice Marshall, the only Black member of the Court, joined Justice Brennan in dissenting from much of the majority opinion.68) The majority’s reasoning was formalistic: categorize, then condemn. To the majority, the strike was a “price-fixing agreement, a ‘naked restraint’ on price and output.”69 Once categorized as such, the strike was deemed, ipso facto, illegal per se.70 The fact that the boycotters clearly wielded no market power was irrelevant. The fact that the supposed “victim” had actively encouraged the strike was irrelevant. The fact that the strike benefited indigent defendants, many of whom were people of color who had endured decades of structural racism, was irrelevant. This was not antitrust’s finest hour.

C. Which Path Have We Taken? The Promise and Pitfalls of Ohio v. AmEx

These bookends of the 1980s—Knights of the KKK and Superior Court Trial Lawyers—suggest divergent approaches to the question of how to administer the antitrust laws. Which path has the contemporary antitrust enterprise pursued? The highest profile case of the past decade, Ohio v. AmEx, suggests both room for hope and reason for concern.

AmEx began as a suit by the U.S. Department of Justice Antitrust Division against the three largest creditcard companies, Visa, AmEx, andMasterCard.71The suit sought to enjoin “no-steering” rules contractually imposed by networks on all card-accepting merchants.72 In general, the challenged rules forbid merchants from presenting any particular credit network in a unique or differentiated way to their customers. Thus, for example, merchants cannot offer discounts for using a particular brand of card, tell customers “We prefer” a certain card, or inform customers of the costs associated with each brand.73 Visa and MasterCard quickly settled, but AmEx—which charged the highest merchant fees—fought to keep its rules in place.74

At trial, the Antitrust Division proved that AmEx’s no-steering rules had stifled competition and increased card acceptance prices across all networks.75 Merchants, in turn, passed along whatever costs they could to their customers via across-the-board retail price increases.76 To its credit, the Division brought to the trial court’s attention one of the most unusual—and most pernicious—effects of AmEx’s rules. Because merchants cannot treat higher-cost cards differently, they must raise retail prices to all of their customers, including those who pay with cash, checks, money orders, and food stamps.77 Such customers tend to be far less wealthy than credit-cardholders, especially AmEx cardholders.78 AmEx passes some, though not all, of its supracompetitive merchant fees through to its own cardholders in the form of cardmember rewards. In other words, AmEx’s rules force the least wealthy members of society to fund lavish travel points and perks for the most affluent.79

In a careful, well-reasoned decision, the trial court held that AmEx’s rules were unreasonable restraints of trade. Judge Garaufis’s opinion resisted easy formalizing and conclusory reasoning. The agreements at issue were between trading partners, not direct competitors. Yet, as Garaufis explained, AmEx’s rules did not “fit neatly into the standard taxonomy” of vertical versus horizontal restraints.80 The challenged agreements themselves may have been “vertical,” but the effects on competition were horizontal.81 AmEx’s rules prevented its rivals from attracting additional business by offering lower prices or higher quality, as Discover learned in the 1990s.82

As to effects, the court did not insist on a showing of any particular type of harm. Instead, it found that AmEx’s rules cause a wide variety of harms, including higher card acceptance costs for merchants, higher retail prices for consumers, and stifled innovation. The court also found the regressive forcedsubsidization effect to be anticompetitive:

[A] lower-income shopper who pays for his or her groceries with cash or through Electronic Benefit Transfer ... is subsidizing, for example, the cost of the premium rewards conferred by American Express on its relatively small, affluent cardholder base in the form of higher retail prices. The court views this externality as another anticompetitive effect of Defendants’ [rules].83

This particular effect technically occurred outside the relevant market (“general-purpose credit and charge card network services”). Again, however, the court refused to allow an artificial construct— market definition—to distract from actual analysis of real-world effects.

The AmEx litigation thus yielded two bright spots: the Antitrust Division’s decision to bring the case and Judge Garaufis’s sophisticated decision. Both closely attended to structural power and inequity. Like Knights of the KKK, these were examples of antitrust directly confronting a power imbalance and seeking to redress its harmful effects.

But that success was short-lived. On appeal, the Second Circuit issued a sloppily reasoned decision for the defendant. (During oral arguments, one of the judges implied that the relevant market must also include cardholders because he personally received frequent credit card applications in the mail.84) A disappointed Antitrust Division decided not to pursue the case further. A group of states led by Ohio, however, proceeded to appeal to the U.S. Supreme Court.

The majority opinion in Ohio v. AmEx carries all of the hallmarks of bad antitrust analysis, and poor-quality appellate review more generally.85 It placed enormous weight on the “vertical vs. horizontal” dichotomy without appearing to recognize the horizontal nature of the restraints’ effects.86 Instead of analyzing the factual record before it, the majority simply ignored—and sometimes outright changed—inconvenient truths.87 Instead of evaluating the relevant effects, the majority insisted on proof of one particular type of effect: an output reduction.88 As to the regressive forced-subsidization effect—which was, again, part of the factual record—the majority opinion was silent. Instead, the majority conjured up a novel effect, positing without support the idea that AmEx’s restraints were actually beneficial for “low-income customers.”89

Today, the widely felt and regressive effects of AmEx’s rules continue unabated. Given the racialized nature of wealth and income inequality in the United States,90 those effects contribute to historically rooted structural inequity. A case that had begun so promisingly ended in ignominy—after something of a zenith at the trial-court level, AmEx now stands as a nadir of modern antitrust.

D. A Path Forward

As bookends for the turbulent 1980s, Knights of the KKK and SCTLA represent two paths for antitrust. AmEx offers a contemporary view of what traveling each of those paths can look like. The antitrust enterprise might take a flexible approach, cognizant of real-world power structures, always seeking to protect the relatively powerless against the more powerful. On the other hand, antitrust might ossify, placing more weight on assigning categorical labels than on assessing actual effects and narrowing the analytical lens until concentrated power—antitrust law’s raison d’eˆtre 91—becomes largely irrelevant.

Cases like SCTLA and AmEx, though troubling, may nonetheless offer useful insights. Set upon the right path, antitrust can serve as a useful tool in moving toward a more just society. Toward that end, four normative suggestions follow.

First, do not place undue weight on the “horizontal versus vertical” distinction. Some horizontal restraints are harmful, but not every horizontal agreement deserves hasty condemnation. The SCTLA majority allowed a label (“horizontal”) to obscure a lack of power. Similarly, Justice Thomas’s defendant-friendly reasoning in AmEx hinged in part on his statement that “vertical restraints are different” from horizontal ones.92 But such broad pronouncements elide the fact that vertical restraints—like the ones at issue in AmEx—can cause effects identical to those caused by harmful horizontal restraints.93

Second, do not place undue weight on categorizing conduct as “price-fixing,” “a restraint on output,” and the like. A classification system can offer value. But, like any other tool, it can be pushed far beyond its usefulness. Labeling the lawyers’ strike “price-fixing” (or, alternatively, a “naked restraint on output”) was essentially the beginning and end of the SCTLA Court’s analysis. Yet not all price-setting agreements are equally likely to cause harm, as most of those very same Justices had previously recognized.94 A strike functions by temporarily disrupting the internal workings of a specific buyer of labor,95 whereas the archetypical price-fixing cartel agreement functions by indefinitely controlling the market for a product.96 From an economic perspective, it makes little sense to treat the two as analytically identical. Classification systems can obscure important nuance, in addition to posing the obvious risk of misclassification.97

Third, do not artificially narrow the analytical lens by insisting on proof of a particular type of effect. Leading treatises,98 law-school casebooks,99 amicus briefs,100 and journal articles101 suggest that all of antitrust can be boiled down to simple analysis of output effects.102 As Bork put it, “The task of antitrust is to identify and prohibit those forms of behavior whose net effect is output restricting and hence detrimental.”103 Antitrust law’s output obsession may well have played a role in the SCTLA decision—recall the majority’s characterization of the strike as a “naked restraint on price and output.” The AmEx majority clearly fell into this trap, insisting that the plaintiffs demonstrate an output reduction despite abundant evidence of actual anticompetitive effects. This makes little analytical sense. Output reductions can be harmful or beneficial to consumers. Conduct can simultaneously push the output of multiple products in different directions. And anticompetitive conduct can be harmful without affecting output levels at all.104 All of this counsels against overreliance on a single type of effect.

Like most disciplines, antitrust has developed a variety of labels and heuristics. But when analytical tools begin to consume the analysis, antitrust can sight of its target. An analytical tool is just that: a tool, to be used when it is helpful and set aside when it is not. To be clear, this is not a call for the abandonment of economic methodology. It is instead a call for better economics, tailored to suit the task at hand. And what is that?

Fourth, antitrust analysis must center the overarching purpose of the law itself: countering concentrated power.105 Amid the complexity of contemporary markets, it can be easy to lose sight of that goal. This may help to explain the SCTLA and AmEx opinions, both of which were regressive in nature. It may also help to explain the federal enforcement agencies’ otherwise-puzzling decisions to weigh in against efforts by rideshare drivers—disproportionately people of color106—to organize.107 Through a narrow lens, collective organizing by workers can be viewed as “horizontal price-fixing” or “output-reducing,” as it was in SCTLA. 108 But, stepping back for a moment, is there any reason to worry that rideshare drivers will exercise dominance over Uber and Lyft, even if they receive limited collective bargaining rights? Keeping antitrust’s goal in view is appropriate not only on deontological grounds but also on utilitarian ones: It allows scarce enforcement resources to be more helpfully allocated.

Divergent paths lay open. The first leads to ossification and erroneous outcomes.109 When antitrust analysis is overly constricted, it risks exacerbating systemic inequality and becomes prone to harming those whom the laws were meant to protect. The alternative is a more flexible, robust approach attuned to economic realities, one that allows enforcers and judges to maintain focus on furthering the law’s fundamental purpose. If—but only if—the antitrust enterprise does so, it can play a vital role in helping to correct structural imbalances of power.

### 1nc – solvency

#### Grounding anarchist politics in an essentialized understanding of blackness is counter-productive

Johnson 19 (Cedric Johnson, associate professor of African American studies and political science at the University of Illinois at Chicago, “Black Political Life and the Blue Lives Matter Presidency,” Jacobin, 2-17-2019, https://jacobinmag.com/2019/02/black-lives-matter-power-politics-cedric-johnson)

My 2017 Catalyst article, “The Panthers Can’t Save Us Now,” was addressed to a specific conundrum within contemporary left politics and anti-policing struggles in particular: that is, the strategic problem of building a counterpower capable of winning in the context of renascent black-nationalist thinking, sheepishness on the Left about class analysis, and a pervasive reluctance to think about black political life with much sophistication. In a sense, the article was less about the historical Black Panther Party for Self Defense than the dangers of the sixties nostalgia that afflicts contemporary struggles, namely the revival of racial essentialism, the colonial analogy, and vanguardist posturing. Such notions were limited as a means of advancing black political life during the sixties, and inasmuch as they preserve the fiction that society-wide, revolutionary changes can be won either by the actions of numerical minorities or sectarian tendencies, they are ill-suited to the challenges we face today. My argument then and now is that Black Lives Matter, and cognate notions such as the New Jim Crow, have been useful in galvanizing popular outrage over policing and mass incarceration, but these same banners have simultaneously enshrouded the very social relations they claim to describe and led away from the kind of politics— one predicated on building broad, popular power — that is necessary to roll back the carceral state. That 2017 article was conceived as an historical materialist antidote to racially reductionist thinking and attempted to excavate the origins of black ethnic politics as we know it. A key conceptual distinction here is between black ethnic politics, that mode of ethnic representational and electoral practices that was expanded and institutionalized nationally through the confluence of civil rights reform and Black Power mobilizations, and black political life, the heterogeneous, complex totality of shifting positions, competing interests, contradictory actions and behaviors that constitute black political engagement historically. That 2017 article was written as a plea for a more mature view of black political life, and a left politics that proceeded from careful analysis of society as it exists toward building popular constituencies around a more just vision of what society might be. This essay expands the arguments of my Catalyst article by addressing the prevailing hesitation to engage in class analysis of black life. Many left activists and academics continue to abide the notion of black exceptionalism, that there is something unique and incommensurable about the experiences of blacks that prohibits any substantive discussion of class position and interests whenever the black population is concerned. This posture is wrong and dangerous. It is not grounded in any close empirical sense of actually existing black life, but retreats toward the most unidimensional sense of the black population as noble, long-suffering victims of oppression and the moral conscience of a white-dominated nation, rather than a people possessing all the social contradictions, ideological diversity, foibles, heroism, and frailties found throughout the American populace. This failure to understand the complexities of black political life leaves intellectuals and activists unable to see the ways that particular segments of the black population, both elites and popular constituencies, have historically supported the carceral expansion and continue to play a crucial role in the reproduction of the highly unequal, unjust neoliberal urban order. Genuflecting before identitarian politics, whether under the guise of Black Power nostalgia or Black Lives Matter sloganeering, does little to help us understand and contest these power alignments. The second part of this essay offers a brief overview of these concomitant processes of black governance, central-city revanchism, and mass incarceration.

#### Even if violence’s is justified, the Aff approach to aggressive anarchistic revolution is unethical *to black people*. Their anti-consequential stance is unethical within their own role of the ballot.

Tunstall ‘7

Dwayne A. Tunstall – Associate Professor of Philosophy at Grand Valley State University. Professor Dwayne Tunstall’s research explores how Africana philosophy, existential phenomenology, moral philosophy, religious ethics, and classical American philosophy can complement one another when thinking about issues of moral agency, personal identity, race, and the legacy of Western modernity. His research has led him to write two books: Yes, But Not Quite: Encountering Josiah Royce’s Ethico-Religious Insight (Fordham University Press, 2009 [hardcover]; 2014 [paperback]) and Doing Philosophy Personally: Thinking about Metaphysics, Theism, and Antiblack Racism (Fordham University Press, 2013). From the article: “Why Violence Can Be Viewed as a Legitimate Means of Combating White Supremacy for Some African Americans”. From the Journal: Radical Philosophy Today - vol. 5, pages 159 - 173, 2007 - obtained via the Philosophy Documentation Center Collection Database.

Today, it is apparent that the social and economic opportunities available to African Americans (i.e., descendants of Africans residing in the United States during the antebellum period) have improved since the Civil Rights era. In such an environment, is there any theoretical justification for those African Americans who have been denied these opportunities to participate in acts of localized violence against the very socio-political system that discriminates against them? More specifically, may these African Americans be warranted in choosing to intentionally destroy the private property and local municipal infrastructure of those who represent the oppressive socio-political and economic system? This article attempts to answer that question by outlining why such violence might be theoretically justified given the current sociopolitical circumstances in which some African Americans live. After outlining why such violence might be theoretically justified, I examine some of the reasons why African Americans should not engage in localized violence as a political strategy to combat white supremacy. This article ends with the somewhat counterintuitive conclusion that (1) localized violence can be theoretically justified on racial realist grounds *and* (2) *it should not* be used by African Americans as a means of combating white supremacy due to its likely detrimental consequences on them.

#### Their revolution might have some minor breakthroughs – as discussed in their ev. But – on balance – it’ll fail and be net worse for black people.

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To answer the second question: Localized acts of violence can have a role in creating opportunities for economically disadvantaged African American communities to empower themselves by repelling those forces that oppress their communities. For example, by vandalizing those businesses that uphold the oppressive status quo—e.g., neighborhood corner stores that contribute nothing to their neighborhoods—African Americans can act to create a space for them to establish a relatively self-determined community. There are serious problems with localized violence as a political strategy for African American community formation, though. The most significant problem with localized violence, in the contemporary American context, is that it is impractical, and indeed *detrimental to the very people that it is meant to help*. It would be detrimental because violently destroying businesses' property as signs of protest would justify *mass*ive police action against African Americans living where those protests occur, fueling the industrial-prison complex and the incarceration of a sizable portion of the young African American population. That would *further weaken* African American communities and *worsen* their already dismal situation: Twelve percent of African American men in their twenties were incarcerated in prison or jail as of 2002;41 an estimated one-third of African American males born, as of 2006, can expect to be incarcerated during his lifetime; an estimated one-eighteenth of African American females, as of 2006, can expect to be incarcerated during her lifetime;42 910,000 of the 2.1 million U.S. inmates are African American, making up "43.9 percent of the state and federal prison population but only 12.3 percent of the U.S. population;"4' and, on any given day, one in fourteen African American children have at least one parent in prison.44

#### Two uniqueness twists. *Things \*CAN\* get worse* AND *The State’s inevitable and necessary even if the revolution works*. They rollback both.

Tunstall ‘7

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Besides, *even if* localized *violence could create a place* *for* economically underdeveloped African American communities to empower themselves, there probably would not be sufficient financial resources available to those communities to be economically independent, at least using legal means. In their influential analysis of the apparently race-based wealth inequalities between African Americans and Euro-Americans, Melvin L. Oliver, and Thomas M. Shapiro paint a grim picture in respect to the prospects of African American wealth accumulation within the last decade or so: As wealth accumulation among African American families be-gan to expand [in the 1990s], recession, declining stock prices, and processes of financial institutions converge to shrink, strip, and consume it. New home ownership and credit markets, in particular, arose in response to new wealth and wealth-creating opportunities in minority communities, and this poses new opportunities, challenges, and dangers. Amid these contractions, the bottom line is that the racial wealth gap worsened during the last decade. Thus, even though we could make an argument that African American achievements on the job and in schools were improving, an escalating racial wealth gap reversed these accomplishments. Increased incarceration rates have dampened African Americans' ability to compete and succeed—much less accumulate wealth—in America even further.45 Without sufficient wealth accumulation, the African American middle and upper classes cannot allocate the financial resources necessary to transform economically disadvantaged African American communities into relatively self-determined ones. Accordingly, these communities would have to venture beyond African American organizations and request assistance from multi-ethnic organizations and governmental agencies to develop their infrastructure. In such an environment, localized acts of violence can harm economically disadvantaged African American communities in need of assistance because those acts can repel the very multi-ethnic organizations and governmental agencies *needed* to implement the programs that empower those communities.

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# 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.

# 1nr

#### That level of extremity is a flawed form of political purity. It’s reductionist to claim Black Anarchy can’t found in measures that fall short of “all-or-nothing”

Bey 20 Marquis Bey (they/them) is Assistant Professor of African American Studies and English at Northwestern University and author of The Problem of the Negro as a Problem for Gender, Anarcho-Blackness: Notes Toward a Black Anarchism, and Them Goon Rules: Fugitive Essays on Radical Black Feminism. Anarcho-Blackness: Notes Toward a Black Anarchism - Source: Published by AK Press in 2020 - #E&F – modified for language that may offend - <https://theanarchistlibrary.org/library/marquis-bey-anarcho-blackness>

“In an Anarchist society,” writes Lorenzo Kom’boa Ervin, “prisons would be done away with, along with courts and police…and be replaced with community-run programs and centers interested solely with human regeneration and social training, rather than custodial supervision in a[n] inhuman lockup.”[127] This eradication of prisons need not be a one-and-done gesture, that is, the razing of all prisons in one fell swoop. Abolition, to be sure, is not interested in mere reform and holds in contempt those who seek modest proposals such as having some prisons for the really bad apples. Abolition is not about that life. At the same time, it is acknowledged that there are ~~steps~~ (measures) toward abolition; there are, in other words, things to be done between now and the dismantling of all prisons, and the things done in the interim may not have the ~~look~~ (perceived characteristics) of complete abolition but are nonetheless in service of that end. In other words, I want to shy ever so modestly away from political purity as a requisite for affiliation; anarchism, I want to maintain, holds the capacity for “capitulations” without denigrating such efforts as characteristic of a person’s or organization’s entire enterprise.

In our particular moment, then, Black anarchism can be found—or sometimes be glimpsed—in movements like that of BLM, or Anarchist People of Color, or Critical Resistance, or the Audre Lorde Project, and in a range of other formal and informal groupings. The point I want to make is twofold: that organizations catering specifically to, and arising from, people who experience the forces surrounding Blackness are doing anarchic work without needing to affix the label to their mastheads. There are organizations that center Blackness that, perhaps by virtue of centering Blackness, politicize themselves anarchically. If they are centering Blackness as larger radical movements, they are given the opportunity to think like anarchists. To think like an anarchist is the aim rather than to hunker down in an ontologized “being” that one considers politically sufficient. To think like an anarchist, and thus to come into performative being by way of such thinking, is the propulsion of the anarcho-. Second, there is already (implicitly) anarchist work being done by people and movements that center Blackness, work that does not concede to a parochial, narrowly identitarian or ontological understanding of the “Black” in their Black anarchism. For these groups and individuals, Blackness is a demand, a critical modality, one in which a racialized situatedness inflects a broader concern about forces of taxonomy and how to subvert them, for racialized ontologies imposed from without are a prominent form of taxonomizing that indexes the more central concern of subverting taxonomizing gestures writ large—taxonomizing gestures that might be described, in other words, as authority.

#### Our arg is NOT that it’ll start out with such an intent – but that violence will be learned along they way – replicating the very domination they seek to avoid.

Martin 8 Prof. Brian Martin teaches in the interdisciplinary area of Science, technology, and society at the University of Wollongong. Published in Gandhi Marg, volume 30, number 2, July-September 2008, pp. 235-257 – “How nonviolence is misrepresented” - also available at: http://www.uow.edu.au/~bmartin/pubs/08gm2.html

Violence often alienates potential supporters. Opponents may dig in and resist more strenuously. A psychological perspective called correspondent inference theory helps explain why. People often infer someone else's motivations by looking at the consequences of their actions. If the actions lead to people dying, the inference is that activists are motivated to kill - not to liberate, which might be their actual motivation. This theory helps explain why terrorists' motives are so widely misinterpreted.[12] Violence targets individuals, but harming *individuals* is not an effective way to challenge *systems* of oppression. Killing a politician does not undermine the state, because politicians can be replaced, sometimes with ones who are worse. Furthermore, a person who is a politician has other roles, such as parent, friend and musician. Violence, by not discriminating between roles, destroys much that is good, rather than targeting the damaging roles and building on the beneficial ones.[13] When challengers use violence, this gives greater legitimacy to state violence against them. The jiu-jitsu effect is reduced, even when the state uses far more violence than challengers. 3. Violence restricts participation. Young fit men predominate in both armies and armed liberation movements. The secrecy accompanying armed struggle also limits participation. Violence can be empowering for those involved, but limited participation means the empowerment is restricted. 4. Violence as a method clashes with the goal of a nonviolent society. Using violence gives training, experience and legitimacy to violence. It causes immediate suffering. And it is easier for campaigns to go off track, down a path towards ongoing violence and associated domination. Points 2, 3 and 4 constitute the core of the case against violence, from a nonviolence point of view. Note that these arguments for nonviolent action and against violence are tendencies, not universal truths. For example, nonviolent action usually wins more support than violence, but not always. Some nonviolent methods allow only limited participation whereas some violent movements have many participants. In adopting nonviolent action from a pragmatic point of view, attention needs to be given to the circumstances. Many nonviolent campaigns are largely spontaneous, without much preparation, planning or training. No one expects armed movements without weapons, training or plans to be very successful. Considering the vast amounts of money and effort put into military operations, it is reasonable to expect that nonviolent action could become far more effective with more resources. For those with a principled commitment to nonviolence, the circumstances do not matter: they reject violence, even if assassinating a dictator might reduce the suffering of millions. But there is an important link between pragmatic assessments and principled stands. If, pragmatically, nonviolent action is usually a better choice, then it can be (pragmatically) sensible to make a principled commitment, because it reduces the risks of misunderstanding by participants, of being falsely labelled violent by opponents, and of going off track in a violent direction. Gelderloos Gelderloos is an anarchist. He opposes systems based on hierarchy and supports egalitarian social relationships created and maintained by the people involved in them. He is opposed to the state, capitalism, racism and patriarchy. Being opposed to capitalism puts him in the left generally, but as an anarchist he is opposed to the state, including state socialism whether advocated by reformist socialists seeking state power through electoral means or by Marxist-Leninists who want to seize control of the state, most commonly through armed struggle, in order to crush capitalism. Gelderloos wants instead to destroy the state - and capitalism, racism and patriarchy - so that people can create their own non-hierarchical systems of self-rule. Gelderloos is an activist and has spent time in prison as a result of protest actions. His passionate commitment to liberation cannot be doubted. But while respecting his vision, dedication and energy, it is possible to criticise his arguments, conclusions and methods.