# 1nc doubles

## offcase

### t

**The role of the ballot is to determine the desirability of topical action –**

#### Federal government refers to the central government – not the aff

**AHD 92** (American Heritage Dictionary of the English Language, p. 647)

federal—3. Of or relating to the **central government** of a federation as distinct from the governments of **its member units**.

#### Our impact is debatability—there are two internal links:

#### Limits. A bounded topic serves as a predictable stasis point for debate that guarantees thematic coherence. Absent defined limits, debate’s competitive incentives create a race to the margins which distorts topic research.

#### Ground. A pre-defined controversy ensures a vibrant lit base and in-depth clash, but it’s unreasonable to prepare for alternative frameworks with the ground allocated to us by the parameters of the resolution All 2AC defense to this claim will rely on concessionary ground, which isn’t a stable basis for a year of debate.

#### Those are key to perform the role of the negative, which outweighs—the role of the ballot is to vote for whoever does the better debating over the resolutional question. Any 2AC role for debate must explain why we switch sides and why there has to be a winner and a loser—switching sides within the competitive yet limited bounds of the topic performs the labor of the negative which avoids group polarization and untested advocacy—this does not limit particular styles, but only tying those to topical advocacy ensures clash which is the only metric for determining the winner

Poscher 16—director at the Institute for Staatswissenschaft and Philosophy of Law at the University of Freiburg (Ralf, “Why We Argue About the Law: An Agonistic Account of Legal Disagreement”, *Metaphilosophy of Law*, Tomasz Gizbert-Studnicki/Adam Dyrda/Pawel Banas (eds.), Hart Publishing, forthcoming, dml)

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

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

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

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

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

f) The Advantage Over Non‐Argumentative Alternatives

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

One reason lies in the mixed nature of our reasons in actual legal disagreements. The different second order reasons can be held apart analytically, but not in real life cases. The hope of coming to terms will often play a role at least for some time relative to some participants in the debate. A second reason is that the objectives listed above **could not be achieved by a non‐argumentative procedure**. Flipping a coin, throwing dice or **taking a gut vote** would not help us to **explore our communalities** or our inferential commitments nor help to **scrutinize the positions** in play. A third reason is the overall rational aspiration of the law that Dworkin relates to in his integrity account111. In a justificatory sense112 the law aspires to give a coherent account of itself – even if it is not the only right one – required by equal respect under conditions of normative disagreement.113 Combining legal argumentation with the non‐argumentative decision‐ making procedure of counting reasoned opinions serves the coherence aspiration of the law in at least two ways: First, the labor of the negative reduces the chances that constructions of the law that have major flaws or inconsistencies built into the arguments supporting them will prevail. Second, since every position **must be a reasoned one** within the given framework of the law, it must be one that **somehow fits** into the **overall structure** of the law along **coherent lines**. It thus protects against **incoherent “checkerboard” treatments**114 of hard cases. It is the **combination** of **reasoned disagreement** and the **non‐rational decision‐making mechanism** of counting reasoned opinions that provides for both in hard cases: a decision and one – of multiple possible – coherent constructions of the law. Pure non‐rational procedures – like flipping a coin – would only provide for the decision part. Pure argumentative procedures – which are not geared towards a decision procedure – would **undercut the incentive structure** of our agonistic disagreements.115 In the face of unresolvable disagreements endless debates would seem an idle enterprise. That the debates are **about winning** or **losing** helps to **keep the participants engaged**. That the decision depends on **counting reasoned opinions** guarantees that the engagement **focuses on rational argumentation**. No plain non‐argumentative procedure would achieve this result. If the judges were to **flip a coin** at the end of the trial in hard cases, there would be **little incentive** to engage in an **exchange of arguments**. It is specifically the count of reasoned opinions which provides for rational scrutiny in our legal disagreements and thus contributes to the rationales discussed above.

2. THE SEMANTICS OF AGONISTIC DISAGREEMENTS

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

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

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

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

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

### frames

#### First – our links

#### Neoliberal lexicon -- The Aff deployed terms from that lexicon. It’s irrel if it was intentional OR even a disingenuous deployment that aspired to K neolib. Speech acts grow more potent when such deployments are removed.

Kipnis ‘7

Andrew Kipnis - Senior Fellow and Professor Andrew Kipnis in The Department of Anthropology, The Australian National University – “Neoliberalism reified: suzhi discourse and tropes of neoliberalism in the People's Republic of China” - Journal of the Royal Anthropological Institute (N.S.) 13,383-400 - #E&F – modified for language that may offend - obtained via J-Stor database.

Another problem is that neoliberal policies, *however defined*, may be sincerely or disingenously pursued. Often enough, powerful *social actors* ~~mouth~~ (deploy) neoliberal slogans or ideology of one form or another in a crass attempt to grab power or exploit others. There may be no intention of actually enacting neoliberal policy or striving for neoliberal goals. This issue should be of crucial interest to those who believe (as the author of this article does not) that neoliberalism is systemic in the contemporary world. If neoliberalism is a systemic 'discourse' (as some governmen-tality theorists would have it), then it reproduces itself by producing 'responsibilized' subject/citizens who re-create neoliberal institutions. From this vantage, disingenuous applications of neoliberal discourse would thus work to undermine neoliberal-ism. But if neoliberalism is an 'ideology' that serves merely to mask the true workings of class domination, then disingenuous applications of neoliberal ideas are central to the reproduction of neoliberalism. In such a case, the actual production of autonomous, responsible citizen/subjects would undermine neoliberalism. Few who write as if neoliberalism were systemic in the contemporary world demonstrate awareness of this contradiction.

#### B -- The aff uses a bunch:

1. Neoliberalism being “non-economic” referring to debate
2. Anti-trust – referring to “your trust”
3. Anti-competitive business practices – referring to how we act in this round
4. Product bundling – referring to our 1nc
5. Predatory pricing – relating to impact discussions

#### C -- Neolib discourse *creates realities* which re-frame the social violence cited by the Aff. That link turns case … it’s also external offense via neolib’s perpetuation of sexualized, racialized, and socio-economic repression.

#### Della Faille ‘15

Dr. Dimitri DELLA FAILLE (PhD, Sociology) is a professor in International Development and Social Sciences at Université du Québec en Outaouai - “A Sociological Understanding of Neoliberal Discourses of Development” - #E&F - https://hal.archives-ouvertes.fr/hal-02046915/document

This paper will attempt to show that social scientists studying development issues must consider these common ideas with considerable caution. We argue that words are, in fact, actions. And as such, they must be investigated. We contend that an examination of underdevelopment and "developing" societies must go beyond an artificial divide between discourse and action. But also, that it must not limit its definition of discourse to an act of deception. Otherwise, we run the risk of misunderstanding social problems, which is the basis for much social action and collective mobilization in the "developing" world. We will also propose in this paper a number of ways to examine language and discourse that go beyond received ideas. We will attempt to show that they are integral parts of action - whether scholarly, activist, administrative or otherwise - against underdevelopment. In the first place, we will focus most of our explanation on how neoliberal governance and policymaking use language, social representation and discourse to achieve their goals. Using example of neoliberal discourses, we will attempt to show how the main ideologies of the various contemporary development discourses transforms our perception and understanding of development problems. This transformation, we argue, exists both in imposing the use of specific words and in successfully controlling means of communication.

We will begin with a quick presentation of discourse and a definition of neoliberal ideologies. Then, we will demonstrate how discourse analysis could study neoliberal discourses by applying to documents about a natural disaster in the Philippines. After this demonstration, we present other various examples of discourse analysis as it applies to development discourses. Then, we present some of the major approaches and methodologies of discourse analysis. Before concluding, we will present some ethical considerations for the analysis of development discourses.

Words of Caution

A paper about language and discourse would fall short of its goal to draw attention to the use of language if it did not contain at least some form of criticism of usages of the word "development". We argue that calling societies "developing" is actually making a normative statement about the past trajectory, current status and expected future of these societies. Social scientists may contend that political, scientific, ethical or lay statements about development and underdevelopment are in fact "problematizations" of human societies. A problematization is a process by which social relations, practices, rules, institutions, and habits previously established are suddenly viewed as doubtful and problematic (Foucault 2001). The word "development" itself may carry different meanings around the world (Thornton et al. 2012). The understanding and expectations of actions in the name of "development" are conditioned by social representations and interpretations. However, we contend that development discourses are problematizations of the "developing" world because they transform the history of societies of Latin America, Asia, Africa and some parts of Europe into a long story of troubles and failures. They do that in order to justify social transformations and interventions (Escobar 1994). We also contend that they are problematizations because they produce cultural discourses that apply specifically to "developing" countries, and therefore reinforce ideas about the perceived superiority of "developed" countries over the rest of the world (Mohanty 1984).

This paper refuses to hierarchize societies based on perceptions of their economic achievement, their form of political governance or the global recognition of their cultural products. We recognize that discourses about "development" are problematizations, and that perceptions of any social, political or cultural inferiority of these regions, countries or populations must be criticized. We therefore use the term "developing" for some societies, not as a normative statement on regions, countries, and populations viewed as economically, socially, politically or culturally inferior to the "developed world", but rather as an unfortunate shortcut to describe regions and countries in which actors desire to act in the name of "development". There is a wealth of scholarly literature on criticism of the use of the word "development", some of which is evoked further in this paper.

We will give further explanations that might help you better understand why we must be cautious when comparing societies in terms of their perceived "development". Now that we explained why we, in this paper, are cautious of talking about "development" and "underdevelopment", let us very briefly present some aspects of discourse and its analysis.

Understanding discourse and its analysis

If discourse analysis is getting more recognition in development studies, before we further embark in this paper it must be noted that if you chose to study discourse, you might encounter disapproval (Ziai 2015). As we have argued elsewhere, discourse analysis is often viewed with reservations or criticized in the context of the study of "development" and "underdevelopment" (Delia Faille 2011; 2014). But very often, the criticism comes from misunderstanding of what discourse actually is. Discourse analysts face many commonly held ideas, as per the examples we have provided in the introduction of this paper. We believe that the best way for social scientists to justify the analysis of words, language and communication is to approach it with a clear definition of discourse that relates to the study of social relations and also to present convincing analysis. This section attempts to clarify our definition of discourse analysis and the following sections will attempt to illustrate how this analysis relates to the study of social relations and "development".

Social scientists studying discourses are examining the social and institutional constraints of language. At the conceptual level, language can be apprehended either as a social fact determined by material conditions and social domination, or as a field of social activity with specific rules and a social environment where meaning, social relations, and society are produced. Most discourse analysts adopt the latter conception. They attempt to reveal the strategies that aim to convey cultural values and ideologies, whether implicitly or explicitly. They define language as the production of meaning and the results of acts of communication that are conditioned by collective rules and social codes. Through the use of language, social groups and individuals come to build their identity, describe themselves, interact, and share ideas. Language is thus more than the use of specific vocabularies and grammars. It is an organized sequence of social acts that is not limited to speech or utterance. Some analysts study images and material artefacts as sequences of social acts and social strategies to convey ideologies.

In the 1960s French and British philosophers, sociologists and political scientists began to understand the production of language in terms of communication strategies. This new direction was dubbed the "linguistic turn" of humanities and social sciences (Rorty 1967). Based on several decades of debate in literary study, linguistics and anthropology, discourse analysis emerged as a new discipline. It proposed a way to see language as a field of social confrontation and struggles. Discourse is therefore understood as the social usage of language and studied as a social practice and a materialization of social relations. It means that discourse analysts are interested in the social practice of using language to put forward agendas, to express dissent, to defend a position, or to transmit values. They also study acts of silencing and censoring - such as prohibiting other worldviews from circulating and being heard. Therefore, discourse analysts see language as a series of social processes and they acknowledge that language is not limited to otherwise unrelated individual acts.

Discourse analysis could be described as a political understanding of the use of language in the context of unequal access to platforms of decision making, economic resources, and social recognition. As we will attempt to demonstrate throughout this paper, the study of discourse is not limited to looking for hidden agendas, lies or the uttering of meaningless and empty words. Deception is only one of the strategies used to convey worldviews, and it is not necessarily the most effective or even the most interesting for discourse analysts.

Some schools of discourse analysis criticize social reproduction of gender inequality, racism and social class. Critical Discourse Analysis is an example of this field. For this school of thought, discourse analysis is the social study of language, its social constraints and its effects (Fairclough 2001). Through language, social groups come to represent society in a way that perpetuates domination, positive or negative discrimination, and social repression. Critical discourse analysts look at the perpetuation of social conflicts and unequal relations of power. They examine issues related to gender, sexuality, social class, and ethnicity.

While our presentation of neoliberal discourses and its analysis does not fall totally under the umbrella of the school of Critical Discourse Analysis, this paper demonstrates how to analyse discourse in the context of the study of global inequalities, social discrimination and repression. We are critical of the current state of global politics, economy and society as it reproduces and reinforces inequalities. Therefore, the next section presents a critical analysis of neoliberalism understood as an ideology whose aim is to impose its ~~worldviews~~ (perspective) and the interest of the actors it attempts to defend and whose interests this ideology is putting forward in the context of development discourses.

#### 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.

Williams ‘15

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

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

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

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

#### 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.

### cp

#### The United States federal government should limit the state action immunity doctrine

#### Parker is central to a host of exclusionary practices now – the CP’s demonstrative of antiracist antitrust

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~~ (intervened) to help, the student’s career could have been ruined. African hair braider Isis Brantley was once arrested for braiding hair without a cosmetology license—a license that wouldn’t have even taught her to braid hair. In Louisiana, elderly widow Sandy Meadows was prevented by the board from earning a living arranging flowers because Louisiana requires a license to do so and she couldn’t pass an exam with a lower pass rate than the state’s bar exam. When she died, she was living in poverty.

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

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

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

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

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

## 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. Carefree 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.

#### They said all of these things but how does a ballot solve:

1. Traumatic news stories
2. “testing” the aff and every neg team they’ll face further
3. Curricular discrimination in school
4. Closeted racists doing bad things in other areas
5. Parties with “white hoods” that relate to debate
6. Zoom calls with neg teams

#### The ballot obviously can’t solve directly BUT voting aff for carefree requires the assumption that it is conditional on a win – choosing to support livelihood of certain debaters does not require that external validation and only risks exclusionary decisions that aren’t key to aff solvency

### 1nc – engagement da

**The aff rests in a one-size fits all model that precludes negative state action or political engagement that can create real, material change – spills over to a rejection of the political which precludes harnessing legal education to inculcate the skills and tendencies of rebellious lawyering. This turns the case and is offense for our model - its the most plausible internal link from debate to social and political agitation for social justice**

**Archer 18** (Deborah N., ACLU President of Director’s Board, Professor of Clinical Law @ NYU School of Law, “POLITICAL LAWYERING FOR THE 21ST CENTURY,” draft, pp. 1-43) {DK}

Many law students are overwhelmed by injustice. When faced with the reality of systemic inequities, even the most committed students may surrender to hopelessness, despair, and inaction. **This is** not because they have stopped caring about injustice, but **because they cannot envision a path from injustice to justice.** Many do not have the tools to navigate systemic injustice or respond to interwoven legal and social ills. This article contends that although clinical legal education provides an excellent opportunity to offer students the skills, experience, perspective, and confidence to grapple with today’s complex social justice issues, it has not sufficiently responded to the changing educational needs of our students by teaching law students how to most effectively utilize litigation alongside other tools of systemic reform advocacy.

How can clinical education prepare law students to navigate issues of systemic discrimination and injustice? Clinical teaching’s signature pedagogical vehicle involves students providing direct representation of individual clients in straightforward, manageable cases in which students focus on discrete legal issues, take full ownership of the case, and see it through from beginning to end.1 These cases train students to be creative problem solvers for individual clients. However, this model does not effectively prepare students to address and combat structural or chronic inequality. The individualized model also provides relatively limited opportunities for students to address the intellectual and skills-based challenges of lawyering on a larger scale.2 **Complex cases** allow students to explore the complicated relationship between justice, law, and politics.3 They introduce students to many of the skills needed to **integrate rebellious** or political **lawyering** into their practice, including working with others to **brainstorm, design, and execute an advocacy strategy**; helping to **build** and participate in **a coalition**; engaging in **integrated advocacy**; and analyzing the outside forces that help shape outcomes, including **organizational capacity**, **challenges of enforcement**, and **potential political backlash**.4

There is a longstanding and ongoing debate within the clinical legal education community about the relative merits of small, individual cases versus larger impact advocacy matters.5 The parameters of this debate, coupled with an influential body of clinical scholarship criticizing impact litigation and the lawyers who bring it,6 have led the clinical teaching community to overreact to these critiques by moving farther away from impact advocacy and strategic litigation rather than working to reconcile the legitimate concerns with the critical importance of impact advocacy as a tool for both systemic social change and legal education. Law schools also face internal and external pressures that affect their willingness to engage students in strategic litigation. The result is that important benefits of impact advocacy and strategic litigation have gotten lost or minimized.

Twenty years ago, social justice advocates **rallied around political lawyering** as a tool for **more effective advocacy** on behalf of marginalized communities.7 **Political lawyering employs a systemic reform lens in case selection, advocacy strategy, and lawyering process**, with a focus on legal work done in service to **both individual and collective goals**.8 While litigation is central to political lawyering, political lawyers recognize that litigation, interdisciplinary **collaboration**, **policy reform**, and **community organization** **must to proceed together**. Litigation is just one piece of a complex advocacy puzzle. However, clinical law professors have never fully grappled with how to employ this model.9

Law professors today seeking to train the **next generation of social justice advocates** should expose students to the transformational potential of integrated advocacy—strategic litigation, community organizing, direct action, media strategies, and interdisciplinary collaboration proceeding together—in the fight for social change. **Political lawyering can serve as a model.** The NAACP strategy of building comprehensive advocacy campaigns to challenge racial and economic injustice helped to launch the political lawyering movement in the last century.10 But political lawyering in the 21st century needs to do more. It needs to re-embrace and update the concept of integrated advocacy to help lawyers leverage a broad range of tools and perspectives to generate effective approaches to issues of injustice, both nascent and chronic. Charles Hamilton Houston, the architect of the strategy to challenge the racialized policy of “separate but equal,” whose life work challenged racial injustice in novel ways, famously explained that “a lawyer’s either a social engineer or he’s a parasite on society,” defining social engineer as a “highly skilled, perceptive, sensitive lawyer who understood the Constitution of the United States and knew how to explore its uses in the solving of problems of local communities and in bettering the conditions of the underprivileged citizens.”11 Law schools should set as an ambition teaching students to push boundaries in diagnosing and tackling the most pressing problems facing society.

The Article proceeds in three parts. Part I discusses political lawyering and explores its potential to serve as a framework to teach students the legal and extra-legal advocacy skills necessary to tackle the complex challenges of systemic injustice and inequity. Part I also discusses the institutional barriers that limit the ability and willingness of legal educators to exploit the pedagogical potential of a political lawyering framework, including the idea that litigation is often harmful to the cause of justice because it puts the lawyer ahead of the community being served. Part I then examines whether the choice that clinical legal education makes to teach through small, single-issue cases rather than through more complex vehicles offers students sufficient opportunities to develop the array of skills needed for integrated advocacy. Part II describes the ways that clinical legal education can reframe political lawyering as political justice lawyering, both to adapt to the current environment—complicated by the current partisan political climate—and the contemporary challenges of social justice advocacy. It also explores pedagogic strategies that clinical legal educators can employ to train effective 21st century social justice lawyers. Finally, Part III presents a case study from my own teaching to elucidate the opportunities and challenges inherent in this approach to clinical teaching.

I. POLITICAL LAWYERING AS A FRAMEWORK FOR LEGAL EDUCATION

“Social vision is part of the operating ethos of self-conscious law practice. The fact that most law practice is not done self-consciously is simply a function of the degree to which most law practice serves the status quo. Self-conscious practice appears to be less important, and is always less destabilizing, when it serves what is, rather than what ought to be.”

- Gary Bellow12

In 1996, the Harvard Civil Rights-Civil Liberties Law Review published a symposium on “political lawyering”: a model of social justice advocacy that integrates legal advocacy and political mobilization by linking courtroom advocacy to community education, mobilization, and organizing.13 The symposium, honoring Gary Bellow, a leading political lawyer of the time and one of the architects of clinical legal education, explored the potential for political lawyering to respond to the social justice challenges of the moment.14 At the time of the symposium, progressive scholars and activists believed that America was in a period of retrenchment on civil rights and were in search of sources of hope.15 In the face of waning public support for the poor and disenfranchised, both financially and philosophically, one of the biggest dangers social justice advocates faced was despair about the possibility of progress.16 Bellow contended that the nation’s ideological reconfiguration created a potentially debilitating doubt among lawyer-activists who, faced with declining avenues for change, had “embraced a far too constricted definition of both the possible and desirable in law-oriented interventions than is, in fact, dictated by the rightward turn of national and local politics.”17 With victory harder to achieve, he insisted that lawyers who embraced and reimagined political lawyering would advance the fight for equality more effectively.

The purpose of political lawyering is not to advance a particular partisan agenda: It is to represent disenfranchised communities against the forces of oppression.18 While difficult to define precisely, political lawyers take a politicized and value-oriented approach to legal work done in service to both individual and collective goals,19 embracing “politics” in the classical sense as a concern “with what it means to be human; what is the best life for a human being; and . . . the ways in which we can order our living together so that good human lives will emerge.”20 Practically, political lawyers use a systemic reform lens in decisions about case selection, advocacy strategy, and the lawyering process. Political lawyers think about the relationship between law, politics, and justice21 and use the law to animate fundamental change in society, to alter the allocation of power and opportunity, and to enable those individuals and communities with little power to claim and enjoy their rights.22 Political lawyers also take advantage of opportunities to influence the perceptions and behaviors of those in power.23 Finally, political lawyers empower individuals and communities by providing them with competent legal advocacy,24 but do not confine themselves to one mode of advocacy in their quest for structural change. Instead, political lawyers use integrated advocacy strategies, including litigation, legislative advocacy, public education, media, and social science research, assessing the efficacy and impact of each tool in service to a long-term visions of equality and solidarity.25

A. A ROLE FOR POLITICAL LAWYERING IN CLINICAL LEGAL EDUCATION

In his essay, Gary Bellow described several examples of his experience as a political lawyer.26 He reflected that:

Certainly, if one focuses on the strategies employed in these examples, few uniformities emerge. In some of the efforts, we sought rule changes or injunctive relief against a particular practice on behalf of an identified class. In other situations, we pursued aggregate results by filing large numbers of individual cases. Some strategies are carried out in the courts. At other times we ignored litigation entirely in favor of bureaucratic maneuvering and community and union organizing. Even when pursuing litigation, we often placed far greater emphasis on mobilizing and educating clients, or strengthening the entities and organizations that represented them, than on judicial outcomes. And always, we employed the lawsuit, whether pushed to conclusion or not, as a vehicle for gathering information, positioning adversaries, asserting bargaining leverage, and adding to the continuing process of definition and designation that occurs in any conflict.27

The parallels between the challenges social justice lawyers faced in the 1980s and 1990s and those that law students committed to social justice 28 face today are evident. As discussed earlier, law students’ own **despair about the enormity of the fight for justice can compromise their ability to recognize and tackle chronic injustice.** Like the earlier generation of political lawyers Bellow described, many law students today find it difficult to believe in the **possibility of change** let alone its likelihood. **Inexperience challenging systemic legal problems exacerbates their skepticism.** They recognize that the advocacy tools they have learned are insufficient to solve today’s problems, which fuels their sense of doubt.

To help expand their understanding of what may be possible, law students, particularly those interested in continuing the fight for racial justice, should be taught to understand and embrace the goals, strategies, and tools of political lawyering—re-imagined for current times. Clinical professors need not adopt political lawyering wholesale as the only or primary approach to teaching lawyering skills and legal advocacy. Indeed, one of the challenges social justice advocates face is unnecessarily limiting the understanding of what it means to be a good lawyer. Rather, clinical professors should explore political lawyering as one framework they can use to help struggling law students find direction and inspiration, as well as to create a sense of connection to the work of the social justice lawyers who preceded them. As Gary Bellow wrote:

Doubt and defeatism, the sense of overly pessimistic assessments of action possibilities, are recurrent experiences in oppositional politics, whomever the political actors may be. They require hard-headed assessments of what works and why; a willingness to relinquish strategies and goals born of different possibilities and particularities. . . . **Doubt and defeatism produce powerful spirals that can only be broken by** acts of will and **leaps of faith.**29

To be an effective political lawyer, an advocate must have a “profound willingness and ability to learn about and respond to the complexity of real human beings in ever-shifting legal, economic, and social worlds.”30 So, while political lawyering is certainly grounded in effective legal advocacy, it demands more than conventional legal skills. The political lawyer values deep personal involvement as a necessary component in addressing and tackling legal issues. That personal engagement can take many forms, but, at a minimum, involves countless conversations, collaborative brainstorming, comparing shared experiences, and adding empathy and commonality to enhance the legal analysis and political judgment.31 It also requires lawyers to advocate with a **clear vision** of what justice looks like because effective political lawyering “reache[s] not only across large numbers of people, but from the present into some altered version of the future.”32 Learning to combine savvy legal analysis with broad engagement, a deeper understanding of the complexity of the problems faced by impacted communities, and envisioning an altered and **more just future** can help lead to **real solutions** and overcome passivity and paralysis.33

The Civil Rights Movement, with its blended advocacy strategies, pulling a variety of levers to enable immediate or systemic change, offers one example of political lawyering. Visionary leaders helped give voice to the frustrations and demands of the community, while other leaders acted as tacticians to devise, plan, and coordinate the strategy.34 There were sustained and strategic protests to draw public attention to injustices, demand change, and apply political pressure. The strategic use of litigation led gradually to the establishment of the building blocks for systemic change. Finally, civil rights lawyers worked to enshrine litigation victories in legislation.35

While the goal of political lawyering is to empower and advance the rights of disadvantaged communities, the lawyers who engage in it also reap significant benefits. One scholar effectively articulated some of these benefits utilizing religious terms, asserting that political lawyering can provide hope and direction to advocates by providing a “faith”—“a story, an account of a rational hope that provides people with an image and principles for realizing the sort of lives they ought to live.”36 Political lawyering can also provide what Christians refer to as a “gospel”—a story that explains and inspires.37 The faith and gospel of political lawyering can help lead law students who are overwhelmed by injustice to a place of deeper understanding and more effective advocacy. But law students must learn how to understand, articulate, and deploy that faith and gospel in service of others.

B. INSTITUTIONAL CONSTRAINTS ON POLITICAL LAWYERING

**Complex social justice problems offer robust opportunities to teach students about the law and lawyering**, and legal clinics serve as an important vehicle to **bring that set of issues and experiences into the classroom.**38 As law schools reevaluate the nature and function of legal education in light of market forces,39 they should also give attention to the role of justice in the curriculum and the potential for law school clinics to be centers for incubation of new and evolving models of lawyering. By embracing political lawyering and encouraging engagement on complex and novel social justice issues, clinical legal education can operate as a “generator of new visions for legal practice” on behalf of poor and marginalized communities.40 Of course, that choice is not without hurdles or concern.

1. Ideological, Financial, and Pedagogical Pressures

When clinical and experiential learning programs have moved away from an access to justice model—with a focus on the immediate challenges facing individual clients—to a broader social justice model focused on systemic reform and community empowerment, they have often encountered criticism from inside and outside of the legal academy.41 First, critics have raised concerns that integrated advocacy in support of systemic reform may elevate the profile of faculty and law schools but detract from an appropriate focus on the educational goals of individual students.42 Others have identified the potential for violating the separation between pedagogy and partisan politics.43 And still other critics have identified a risk that faculty will impose their personal political perspectives on their students.44 As discussed in more detail below, integrated advocacy strategies can, in fact, serve as valuable clinical teaching tools that promote broader student learning and support important pedagogical goals. By contrast, exclusive reliance on individual representation offers limited opportunities to teach essential lawyering skills, including the skills critical to identifying and challenging systemic injustice.45

Every clinical program makes a political decision in deciding which cases to take or not to take, as each decision has political implications.46 Accepting cases in criminal justice, immigration, environmental justice, and international human rights, for example, involves political choices, regardless of whether the issues are addressed through individual representation or systemic reform efforts.47 Clinics will continue to represent individual clients who are the victims of poverty, discrimination, and disenfranchisement. These cases do not suddenly become inappropriate teaching tools because the lawyer aggregates those claims and utilizes complementary strategies to seek systemic, community-wide redress. Lawyers must be free to use all available means to challenge the marginalization of their clients, including strategic litigation, legislative advocacy, and other advocacy strategies designed to achieve systemic reform. If law schools intend to fulfill their promise to prepare law students to tackle urgent and pressing challenges, then they must teach students to identify and address interlocking legal and social problems.

Still, while law schools have educational ambitions, they also face financial demands that might affect their educational choices. In fact, those financial realities may motivate schools to avoid disputes that expose them to financial risk and to a potential loss of good will that a clinic’s involvement in controversial cases might occasion.48 While that institutional concern certainly has merit, it is not unique to political lawyering on behalf of clients. Whenever a law school chooses to represent clients, there is the potential for someone to take issue with the school’s choice of side or client. Similarly, law schools may experience external pressures from government, private entities, donors, and alumni to prevent the use of law school resources to challenge powerful corporate or government interests.49 These critiques evoke the successful challenge to Legal Services Corporations engaging in class action litigation on behalf of their clients50 and the long history of efforts to limit the means through which clinics can represent their clients.51 History is replete with examples of external attacks on law schools’ clinical efforts. From the 1968 attack by state legislators on the clinical program at the University of Mississippi School of Law over its involvement in a school desegregation suit,52 to the early 1980s threats to limit the activities of the University of Connecticut’s criminal defense clinic after the clinic successfully challenged a provision of the state’s death penalty statute,53 to the 2017 decision of the University of North Carolina Board of Governors to defund the law school’s Center for Civil Rights’ work to challenge systemic and racialized barriers to equality, law schools have experienced public scrutiny and scorn for their client and case selection decisions.

A clinical faculty member’s case selection decisions should not be without limits or guidelines. For example, limited resources and specific pedagogical objectives will necessarily dictate which cases will be considered appropriate. However, making case selection decisions on the basis of pedagogical choices differs fundamentally from decisions based on ideological pressure from outside forces. The latter raises fundamental questions of academic freedom and other professional responsibilities.54 Clinical faculty members must maintain some independence to choose cases and clients that meet that clinic’s educational and public service goals.55

2. The Anti-Litigation Bias

Political lawyers have long embraced litigation’s potential to achieve “radical extensions of democracy, equality, and racial justice” in addition to structural and cultural change.56 Law reform and structural change are important aspects of political lawyering.57 Accordingly, impact litigation on behalf of marginalized people and communities has long been an important tool for political lawyers.58 Indeed, the NAACP’s fight against racial segregation and inequality in the 1940s and 1950s represents an early example of political lawyering that strategically deployed litigation as part of

a comprehensive effort to resist oppression and advance equality.59 Political lawyering never embraced an exaggerated belief that litigation should be the centerpiece of the fight for equality.60 Instead, like the advocates at the heart of the NAACP’s desegregation strategy, political lawyers “recognized that litigation, interdisciplinary collaboration, and community organization had to proceed together.”61

In the late 1990s and early 2000s, political and cultural shifts affected the strategies many political lawyers employed. New federal restrictions on the use of impact litigation and legislative advocacy by legal services lawyers were a cause of significant concern.62 Where impact litigation remained a possibility, many political lawyers worried that litigation offered a dangerous path. Although federal courts, in particular, had proved supportive in the fight for racial justice in the 1960s, progressive lawyers in later years worried that a more conservative judiciary was just as likely, if not more inclined, to set back progressive movements.63 This concern proved correct, particularly in the area of racial justice. Decades of conservative appointments to the federal bench64 led to a series of legal setbacks65 that effectively limited the federal courts as a venue for the redress of illegal discrimination.66 Many advocates also believed that while progressive lawyers were toiling away in the courtroom and achieving only minor success, conservative advocacy groups had mastered the more efficacious strategy of building powerful grassroots constituencies.67

As courts increased their hostility to civil rights and racial justice, making victory and progress more difficult, political lawyers turned away from litigation and began focusing on alternative methods to fight for social change.68 While the labels have changed, the fundamental purpose of the work remained the same. Political lawyering gave way to rebellious lawyering, community lawyering, and movement lawyering.69 These models of advocacy embrace different visions of advocacy that may vary in the emphasis placed on the law’s comparative advantage relative to other strategic methodologies and tools.70 But, they all acknowledge the bond that joins client, community, and lawyer together in a common enterprise: empowering those without power and fighting for justice and equality. The de-emphasis on strategic litigation brought real benefits. It encouraged lawyers to work as members of a team, and challenged lawyers to ensure that those marginalized by injustice played a central role both as the focus of the advocacy and as participants in the advocacy, a positive turn regardless of the motivation.71

This evolution came at a cost. What began as a tactical de-emphasis on litigation evolved into a philosophical bias against litigation as a social justice advocacy tool.72 Initially, social justice lawyers turned away from impact litigation because they feared that an increasingly conservative judiciary would use these cases as an opportunity to further roll back prior gains. However, with time, the reluctance to pursue litigation became less a reaction to circumstance and more a matter of principle. Some writers argued that litigation is a tool through which lawyers usurp the authority of already marginalized clients by setting their priorities for them.73 And, they claimed that litigation disempowers communities because of the unbalanced power dynamics between social justice lawyers and marginalized clients.74 An example is the dialogue around rebellious lawyering, one of the most prominent models for social change advocacy. Gerald López conceptualized rebellious lawyering as an advocacy model that would empower poor clients through grassroots, community-based advocacy that was facilitated by lawyers.75 Rebellious lawyering emphasizes concepts of community organization, mobilization, and “deprofessionalization.”76 It calls on lawyers to reflect on critical elements of the attorney-client relationship that may further oppress members of marginalized communities.77 Through rebellious lawyering, Professor López advances the belief that although lawyers should help solve problems facing the poor, lawyers are not the preeminent problem solvers in that relationship and should defer to clients and communities.78 Gerald López prefers that lawyers focus on “teaching self-help and lay lawyering” to empower communities to help themselves.79

Professor López espoused his positive vision of rebellious lawyering as an alternative to what he calls regnant lawyering.80 Professor López asserts that regnant lawyers are convinced that they need to be the primary and active leaders in their representation of poor people. Regnant lawyers find community education and empowerment to be of only marginal importance.81 The result is that the regnant lawyer dominates the attorney-client relationship, giving little voice to the needs or concerns of the client. Finally, Professor López also believes that regnant lawyers have little practical understanding of legal, political, and social structures.82

Rebellious lawyering raised important questions about the role litigation should play in social justice movements. Gerald Lopez was certainly skeptical that “legal technicians” could make a meaningful contribution83 and questioned whether lawyers turned to litigation because it was best for the client or because the lawyer wanted to play “hero.”84 All political lawyers should ask themselves these questions when considering impact litigation as part of integrated advocacy on behalf of marginalized communities.85 But, over time, commentators began to equate regnant lawyering with impact litigation.86 Some social justice advocates argued that impact litigation perpetuated racism because white lawyers used it as a tool to impose their views on communities of color.87 Others advanced images of litigators as outsiders who used poor communities as guinea pigs in their social justice experiments, warning that “practicing law in the community is not a tourist adventure and, therefore, we must eschew the routine of the autonomous, interloping advocate who dreams up cases in the home office and then tests them on the community.”88 Litigation, and systemic reform litigation in particular, became synonymous with regnant lawyering: an “enemy” of social justice and not a tool fit for people committed to fighting for enduring social change.

Derrick Bell advanced one of the most prominent and influential critiques of litigation.89 Although he acknowledged the success of the first decade of school desegregation litigation, Professor Bell questioned the lack of lawyer accountability to marginalized communities. According to Professor Bell, NAACP lawyers continued to employ an advocacy strategy that focused on structural school desegregation, even while many members of the Black community preferred a strategy that would have focused on building quality, though segregated, neighborhood schools.90 He cautioned that social justice advocates failed to acknowledge growing conflicts between what they believed were the long-range goals for their clients and the client’s evolving interests and needs.91 In the end, many members of the impacted community were left feeling marginalized. Professor Bell also suggested that “civil rights lawyers, like their more candid poverty law colleagues, are making decisions, setting priorities, and undertaking responsibilities that should be determined by their clients and shaped by the community.”92

Certainly, many lawyers who use litigation as a tool for social change are regnant and paternalistic, but **these qualities are not inherent** in litigators working with marginalized communities.93 Social justice advocates should have a healthy skepticism about the ability of the law, standing alone, to achieve lasting social change.94 They should always engage in advocacy that moves the client from the margins to the center.95 **But**, **advocates should** also **resist pressure to narrow the definition of what it means to be a great lawyer.** The discussion of social justice advocacy far too often **collapses** the framework not only of political lawyering, but **all advocacy on behalf of poor and marginalized individuals and communities**, **into one that largely rejects the important role that strategic litigation has played and can continue to play in the fight for social justice**. The ubiquity of the anti-litigation narrative **encourages progressive law students**—and many clinical law professors—**to dismiss litigation** and its potential for challenging bias and discrimination. Many progressive law students are afraid to become the professionals they envisioned they would be.96 They do not want to become the discrimination tourist derided in the literature.

In response to the critique of social justice litigation, **there is a growing body of scholarship supporting the conclusion that litigation is a key strategy for protecting and expanding the rights of marginalized communities.**97 This body of scholarship acknowledges that litigation has played a critical role in the struggle for justice and equality, and that it continues to be “an **imperfect but indispensable strategy of social change**.”98 Finally, these scholars examine social justice litigation in the context of the tradeoffs of different forms of activism, evaluating its potential in relation to available alternatives and revealing a new understanding of the link between law and social justice reform.99

The demonization of strategic litigation that persists in many progressive lawyering circles not only contributes to student paralysis, it gives them a false sense of what it means to engage in systemic reform litigation on behalf of clients and the community. Many prominent critiques of impact litigation neither provide an accurate depiction of the potential of that litigation, nor educate students on how to apply principles of political lawyering to that litigation. Indeed, while Derrick **Bell** prominently critiqued the role of strategic litigation in social justice movements, he also **believed** that **litigation**

**can be an important means of calling attention to perceived injustice**; more important, . . . litigation presents opportunities for improving the weak economic and political position which renders the black community vulnerable to the specific injustices the litigation is intended to correct. Litigation can and should serve lawyer and client, as a community-organizing tool, an educational forum, a means of obtaining data, a method of exercising political leverage, and a rallying point for public support.100

Law students should be taught that lawyers who engage in systemic reform litigation, just like any other lawyer, can and should work with and on behalf of those victimized by discrimination. Indeed, despite the one- dimensional picture often painted for law students, not all progressive lawyers believe that “self-help” should be the focus of lawyering on behalf of poor or marginalized communities.101 Moreover, despite the image of the “interloping advocate who dreams up cases in the home office and then tests them on the community,” not all progressive lawyers believe that it is inappropriate for lawyers to independently analyze social justice issues and develop ideas about ways to use the law to bring society closer to justice. Indeed, **“it is artificially constricting to conceive of lawyers as exclusively** or primarily **problem-solvers.** [Lawyers] are not only social mechanics who wait in [their] shops for people to come to [them] with problems to be fixed. [**Lawyers**] **should sometimes create problems.** [Lawyers] should sometimes **deliver problems by translating people’s anger and hurt and insistence on justice into political as well as legal action.”**102 **Many** great advocacy ideas **bubble up from the community**, **but** **equally valid ideas can come from advocates** who have been working with and for those communities (or are members of the community themselves). Progressive advocates must be prepared to provide legal assistance to clients even when those clients do not wish to be active participants in the advocacy. That is embracing the core meaning of client-centered lawyering. Rather than being taught to avoid litigation at all costs, progressive law students need to learn how they can partner with victims of discrimination and be accountable to those victims in the context of litigation. They need to learn the skills of collaborative leadership in law.103

**Advocates should** also **be careful about** advancing **a one-size-fits-all model of advocacy**,104 lumping everything together under the “social justice advocacy” moniker or work on behalf of the “poor and disadvantaged” and assuming that one advocacy approach will work to solve all problems. Sometimes using “social justice” to refer to all of the work being done on behalf of poor and marginalized communities is the right thing to do—it unifies all of those who are fighting injustice on varying fronts. But, it can be harmful when discussing what advocacy tools will be most effective. **Given the many forms that discrimination takes and the many communities** subject to discrimination, law professors should caution students to be suspicious about broad generalizations about what clients always need or do not need, and what lawyers always should or should not do. **There is no universal theory about how to represent disadvantaged or marginalized people.** **What works in the fight for economic justice may not be the best strategy to achieving racial justice.**105 **And what may be appropriate to help one victim of racial discrimination may not work for another.** **There is room for all types of advocates and advocacy.**106 All advocates can be a part of the circle of human concern.107

3. The Preferred Model: Individual Representation

Representing individual clients in small, manageable cases where students retain primary control has long been the preferred vehicle for teaching students to effectively address their clients’ legal problems.108 But many clinical programs focused on representing individual clients are not providing opportunities for students to learn how to utilize the law effectively to challenge systemic discrimination. In addition to teaching foundational lawyering skills like client interviewing, counseling, and fact investigation, clinics should also provide opportunities to teach complex and multi- dimensional lawyering skills.109 As this Section demonstrates, the clinical community’s disproportionate focus on micro-lawyering skills may be hampering the ability of students to focus on the political and social functions of the law and the structural dimensions of the problems facing client communities.110

The founding goals of clinical legal education were to provide law students the opportunity to learn the skills necessary to practice law and provide quality legal services to the poor.111 These origins closely shaped the development of clinical pedagogy and its current emphasis on individual representation.112 Small cases allow law students to have the primary relationship with the client, manage the case from beginning to end, and analyze relatively straightforward legal issues—all core principles of clinical pedagogy.113 The reliance on small cases also provides students with the invaluable opportunity to reflect deeply on the choices advocates make in creating and maintaining lawyer-client relationships.114

In the early years of the clinical legal education movement, most clinical law professors came from legal services organizations and brought with them a preference for the individual client representation that dominated legal services practice.115 Clinical professors embody their learning objectives in their case selection116 and must prioritize some lawyering skills over others because there are limits to what can be learned in a single clinical course.117 In focusing on small cases, early clinicians understandably prioritized the skills they knew to be critical to their own work on behalf of poor individuals.

Today, clinical professors come to teaching from a broader array of professional backgrounds, and unsurprisingly want to bring their experiences into the classroom. They should be encouraged to make clinic design choices and set educational goals for their students based on the skills and knowledge they know to be necessary for success in their own practice areas. To many, the approaches clinical professors adopted at the beginning of the clinical legal education movement are not the answers to the questions and challenges our students face today. An exclusive reliance on small cases, though they are extremely valuable teaching tools, fails many students because small cases offer limited opportunities to teach a broad array of lawyering skills, including the skills critical to challenging systemic injustice.118 Of course, small cases have value—for the client and student both. But, in the new normal, they are often not enough to carry the weight of change.

“Social justice work is rarely easy, clean, or pretty.”119 It can be downright messy and clinics should not shield students from its messiness. Working on larger, more complex cases exposes students to more of the skills necessary to fight for structural change.120 They can learn to exercise intellectual autonomy and to integrate conceptual thinking in their advocacy.121 They teach students how to achieve client objectives while also advancing broader social justice goals. Finally, in complex cases where litigation is a viable option, students are exposed to fundamental questions such as what claims to assert, where to file, who to represent, and who to sue. Students cannot be practice ready without some exposure to these skills.

Some clinical legal educators have questioned the traditional model of clinical education, arguing instead for engaging in work with a broader social justice impact.122 One basis for this argument, for example, is that “case- centered clinics are primarily accountable to students and law school administrators, rather than clients, and fail to serve political collectives.”123 In this conception, clinics prioritize student interests over community interests by accepting only those cases over which students will have full responsibility and reject more complex cases where the students’ limited skills would make that impossible. This is done even when the communities’ interests—and thus the cause of social justice—would be better served by the more complex cases.124 While this critique is framed in terms of benefits to students versus losses to social justice, there is indeed a loss to students as well.

Clinical legal educators who are teaching the next generation of social and racial justice advocates should help students understand the current legal framework for equality, and develop the ability to utilize that framework creatively on behalf of their clients. But, students also have to learn to transcend and reimagine current institutional frames, to conceptualize avenues for relief, create new narratives, and pull together the building blocks of a new legal framework to establish rights that did not exist before. Indeed, many of the challenges facing America today require reimagining justice from the ground up. Future social justice advocates must have social vision—“vision-making work is fundamental to the activist strategies political lawyering inevitably embodies.”125

Charles Hamilton Houston not only taught his law students to conceive that separate can never be equal, he taught them how to develop a legal theory in support of that idea and then to develop an integrated advocacy strategy, including complex litigation, to give that theory legal effect. “The process of linking strategy to political vision always requires adaptation and a detailed understanding of particular contexts for its effectiveness.”126 Moreover, as students move from theory to legal reality, they have to understand the skills required to genuinely engage the community. Indeed, “it is no simple matter to reconcile commitment to both clients and a larger social vision or to navigate the boundary between the insider and outsider communities in which political lawyers work.”127

There are, of course, trade-offs involved in engaging clinical students in impact advocacy, both for the student and the teacher.128 Many clinical faculty have expressed concerns that systemic reform work and complex vocacy matters require too high a cost to core pedagogical goals.129 There is a sense that “big cases” may achieve important social justice goals, but use student tuition to finance political goals without attendant benefits to the students’ education.130 According to this line of critique, if the fundamental goal of clinical legal education is the education of students, clinical education needs to continue to focus on small cases that allow for complete student ownership, with a student seeing the case through from beginning to end.131 Many clinicians believe that complete student ownership from beginning to end is critical to an effective clinical experience, and that this level of student ownership is not possible in big cases.132

The problem with this argument is that giving clinic students sole control of a case from beginning to end is not the only way to maximize student learning. Close collaboration with clinical educators, fellow students, clients, and other collaborators offers rich opportunities for student learning. Working with those collaborators to evaluate a complex problem, consider whether a litigation strategy is appropriate, and implementing that strategy, is precisely the kind of experience students will need to master in political lawyering practice. If clinical programs want to ensure that social justice students develop the skills and values necessary to be responsible and effective lawyers before they graduate, students should have the opportunity to be exposed to advocacy models beyond individual client representation. Otherwise, clinics are missing an opportunity to teach students to embrace and engage in social justice work broadly.

II. REFRAMING POLITICAL LAWYERING FOR THE 21ST CENTURY

Modern social problems present new challenges for political lawyers. As such, political lawyers must evaluate the tools an earlier generation of political lawyers used to determine how to employ them in light of changed conditions. Social justice advocates have destabilized the dominant understanding of lawyering.133 Modern political lawyering must continue that process of destabilization, exploring alternatives to the way lawyers marshal social and economic capital, make strategic decisions, and transgress current structures and constraints.134 Political lawyering advocates should also question attempts to constrict the understanding of what lawyering tools can be employed in service to communities and in furtherance of justice.

A. Expanding the Advocacy Perspective

At the core of Derrick Bell’s critique of the latter stages of the campaign to desegregate public education is the divergence he saw between the interests of NAACP lawyers and those of certain segments of the Black community that evolved after the launch of the school desegregation campaign.135 In many ways, this divergence was the result of a failure to communicate. To effectively engage in the integrated advocacy central to political lawyering, those engaged in individual representation, strategic litigation, legislative advocacy, community organizing, public education, direct action, and other forms of advocacy must remain in constant conversation. They must also use their work to facilitate a constant dialogue between the community, courts, government agencies, and legislatures at the local, state, and national levels.

As part of this ongoing conversation, political justice lawyers must endeavor to expand the perspectives of the public, judges, politicians, and government administrators beyond dated conceptions of justice. **Powerful narratives can break through opposition and resistance, shaping the way society views equality and justice.** In Goldberg v. Kelly,136 advocates disrupted the stock story of greedy welfare recipients trying to take advantage of a fair and responsive bureaucracy by telling “human stories” that introduced the Court “to the day-to-day realities of the lives of poor people—struggling to provide a bare minimum of basic necessities for themselves and their children, while confronting an inefficient, unpredictable, and often hostile welfare bureaucracy.”137 Today’s political justice lawyers must focus on **changing legal rules**, but also **inspiring political action**, **educating the public**, publicizing injustice, and **shaping public debate**. **Developing the ability to craft legal and factual narratives** that are not only respectful and true to the client’s or communities’ experiences and demands for justice, but that can also persuade and influence others in a variety of contexts, **is a critically important skill.**138

Political justice lawyering must also account for the changing economic dynamics within otherwise marginalized communities. Growing income inequality within communities of color mirrors the growing wealth gap within American society as a whole.139 Not only may the experience of race or gender discrimination, for example, differ for people of varying wealth, the advocacy strategies needed to engage those communities may be different as well, depending on the structural barriers to engagement created or exacerbated by economic inequality. Political justice lawyers must wrestle with the complicated economic dynamics within communities of color, remain mindful that widening economic inequality can impact collectivity, and authentically engage with the full breadth of those communities if their advocacy is to be effective.

**Modern political justice lawyering must** also **include strategies to** support and **harness the “disruptive power”**140 **of widespread youth-led movements, collective action, and protest.** Many justice movements seek to harness disruption or provoke unrest to redistribute power or force reforms.141 While disruption through protest has been essential in bringing light and voice to modern social justice issues such as police brutality (through, for example, the Black Lives Matter movement) and economic inequality (through, for example, Occupy Wall Street), **protests standing alone may not be enough to lead to structural reform or transformational change.** **Without a viable replacement to fill the void left by a disrupted system, a clear demand for meaningful change, and a plan for implementing that change, the disruptive power may never translate to justice.**

Finally, modern political justice lawyers must be able to integrate both positive and negative conceptions of equality into their advocacy. Many modern social justice problems are difficult or impossible to fully resolve through court orders.142 Moreover, courts have shown a growing reluctance to issue sweeping injunctive relief that leaves school systems or police departments under the management of courts or court-appointed special masters.143 While utilizing courts to prohibit or limit actions that infringe on individual rights, advocates should be able to articulate a positive vision of what stakeholders can or should do to better promote, protect, and respect those rights. In the context of police reform, for example, victory may take the form of a judicial finding that a police officer used excessive force or an award of money damages. However, even the broadest injunctive relief may struggle to translate into systemic reform—a positive conception of just and effective policing.

B. Expanding the Lawyer’s Toolbox

In order to effect systemic change, lawyers need to understand **what levers are available** to achieve that change, and **when**, **where**, and **how** to pull each lever. **Political justice lawyers must be skilled at integrated advocacy**, using individual and strategic litigation to establish and protect rights, traditional and social media engagement to shape and promote the narrative, community organizing to mobilize effected communities and their allies, and interdisciplinary collaborations to bring the work of other disciplines to bear on creating policies and practices to replace illegal and repressive practices. An effective political justice lawyer has many tools in her toolbox, and knows when and how to use each one. In addition to these tools, political lawyers must learn to **break systemic problems into their smaller components**; **identify advocacy alternatives** and **evaluate the costs and benefits** of each approach; and **resolve instances in which** an attorney’s own social justice **values and vision collide.**

1. Breaking Apart Systemic Issues

Political justice lawyers must be able to break apart a systemic problem into manageable components. The complexity of social problems, can cause law students, and even experienced political lawyers, to become overwhelmed. In describing his work challenging United States military and economic interventions abroad, civil rights advocate and law professor Jules Lobel wrote of this process: “Our foreign-policy litigation became a sort of Sisyphean quest as we maneuvered through a hazy maze cluttered with gates. Each gate we unlocked led to yet another that blocked our path, with the elusive goal of judicial relief always shrouded in the twilight mist of the never-ending maze.”144

Pulling apart a larger, systemic problem into its smaller components can help elucidate options for advocacy. **An instructive example is the use of excessive force by police officers against people of color.** Every week seems to bring a new video featuring graphic police violence against Black men and women. **Law students are frequently outraged by these incidents.** But the sheer frequency of these videos and lack of repercussions for perpetrators overwhelm those students just as often. **What can be done** about a problem so big and so pervasive**?**

To move toward justice, advocates must be able to **break apart** the forces that came together to lead to that moment: **intentional discrimination**, **implicit bias**, **ineffective training**, racial **segregation**, **lack of economic opportunity**, the **over-policing** of minority communities, and the **failure to invest in non-criminal justice interventions** that adequately respond to homelessness, mental illness, and drug addiction. None of these component problems are easily addressed, but **breaking them apart is more manageable**—and more realistic—**than acting as though there is a single lever that will solve the problem.** After identifying the component problems, advocates can select one and repeat the process of breaking down that problem until they get to a point of entry for their advocacy.

2. Identifying Advocacy Alternatives

As discussed earlier, political justice lawyering embraces litigation, community organizing, interdisciplinary collaboration, legislative reform, public education, direct action, and other forms of advocacy to achieve social change. After parsing the underlying issues, lawyers need to identify what a lawyer can and should do on behalf of impacted communities and individuals, and this includes determining the most effective advocacy approach. Advocates must also strategize about what can be achieved in the **short term** **versus** the **long term**. **The fight for justice is a marathon**, not a sprint. Many law **students** experience frustration with advocacy because they **expect immediate justice now.** They have read the opinion in Brown v. Board of Education, but forget that the decision was the result of a decades-long advocacy strategy.145 Indeed, the decision itself was no magic wand, as the country continues to work to give full effect to the decision 70 years hence.

Advocates cannot only fight for change they will see in their lifetime, they must also fight for the future.146 Change did not happen over night in Brown and lasting change cannot happen over night today. **Small victories can be building blocks for systemic reform**, and advocates must learn to see the benefit of short-term responsiveness as a component of long-term advocacy.

Many lawyers subscribe to the American culture of success, with its uncompromising focus on immediate accomplishments and victories.147 However, those interested in social justice must adjust their expectations. Many pivotal civil rights victories were made possible by the seemingly hopeless cases that were brought, and lost, before them.148 In the fight for justice, “success inheres in the creation of a tradition, of a commitment to struggle, of a narrative of resistance that can inspire others similarly to resist.”149 Again, Professor Lobel’s words are instructive: “the current commitment of civil rights groups, women’s groups, and gay and lesbian groups to a legal discourse to legal activism to protect their rights stems in part from the willingness of activists in political and social movements in the nineteenth century to fight for rights, even when they realized the courts would be unsympathetic.”150 Professor Lobel also wrote about Helmuth James Von Moltke, who served as legal advisor to the German Armed Services until he was executed in 1945 by Nazis: “In battle after losing legal battle to protect the rights of Poles, to save Jews, and to oppose German troops’ war crimes, he made it clear that he struggled not just to win in the moment but to build a future.”151

3. Creating a Hierarchy of Values

Advocates challenging complex social justice problems can **find it difficult to identify the correct solution** when **one of their** social justice **values is in conflict with another**. A simple example: a social justice lawyer’s demands for swift justice for the victim of police brutality may conflict with the lawyer’s belief in the officer’s fundamental right to due process and a fair trial. While social justice lawyers regularly face these dilemmas, law **students are not often forced to struggle through them to resolution in real world scenarios**—to **make difficult decisions** and **manage the fallout from the choices** they make in resolving the conflict. Engaging in complex cases can force students to work through conflicts, helping them to articulate and sharpen their beliefs and goals, forcing them to clearly define what justice means broadly and in the specific context presented.

#### the link is magnified by the form of the 1ac

Bronstein 11 – Zelda Bronstein, BA in Philosophy of Politics and Culture from UC Berkeley, MA in Political Science from SUNY Albany, Doctorate in the History of Consciousness Program with a Specialization in American Studies at UC Santa Cruz, Former Professor at UC Santa Barbara and Merritt College, “Politics’ Fatal Therapeutic Turn”, Dissent, Summer, OmniFile Full Text Select

Ganz is no stranger to issues of control and dissent. His book about the farm workers movement, Why David Sometimes Wins, details Cesar Chavez’s descent into autocracy and the resulting decline of the United Farm Workers. But at the trainings he advises—and I speak as a veteran of Camp Obama as well as Camp MoveOn—the focus is on motivating involvement through the emotional pull of storytelling, not inculcating the conceptual and practical tools of democratic mobilization. Ganz’s emphasis on narrative is an understandable response to the wonkery that has too often deadened left calls to action, and compelling moral rhetoric is an essential political tool. But if storytelling is to advance an accountable and effective radical politics, it needs to be premised on explicitly political grounds: the ends and means of power wielded on behalf of the common good. Instead, Ganz’s method gives priority to personal affect and motivation. The upshot is a method of organizing that not only leaves individuals helpless before peremptory authority but also neglects, when it doesn’t actually undermine, the creation of a solid agenda that lays out issues and commensurate policies, and the design and implementation of a strategy that can realize that agenda. The last point was hammered home by Sean Wilentz in a November 2010 New Republic essay that attacked Ganz for disdaining “grubby politics” and issues in favor of inspirational feeling and “values.” Wilentz’s criticism was borne out by the curriculum at Camp MoveOn. Ostensibly, participants were being educated in recruitment. But it was hard to grasp how Ganzian stories would work as a recruiting tool, unless they were folded into an explicitly political context—in this case, MoveOn’s current campaign—from the start. Instead, the campers, almost all strangers to each other, were first invited to expound on their successful encounters with personal challenges of whatever sort. Unsurprisingly, my group found it easiest to come up with stories of self; stories of us proved more elusive; stories of now were pretty much beyond us—a performance that boded poorly for the future of our local council. But the real cause for distress isn’t Marshall Ganz. It’s the adoption of his ideas by the leaders of MoveOn and the Sierra Club, both high-profile organizations that enjoy substantial progressive support. Their embrace of a personalized politics indicates the dismaying extent to which therapeutic values have permeated and distorted our political culture. Treating people with respect is an indispensable component of democratic politics; basing political engagement on personal affirmation is a recipe for ~~impotence~~ [failure]. And political vigor isn’t the only casualty of the therapeutic mode: the irony of both organizing by storytelling and online citizen participation is that for all their preoccupation with personal well-being, such tactics actually weaken individual character. Instead of disseminating an anemic form of activism, the Left should be fostering the strenuous citizenship essential to democracy. We can do that only if we recognize what such citizenship entails: the morale to identify with a common cause; the will to act; the wit to temper passion with astuteness; the courage to call power to account; and, in Max Weber’s poignant phrase, “the steadfastness of heart which can brave even the crumbling of all hopes.”

#### Especially true for black women

Collins 14 Dr. Patricia Hill Collins is a Distinguished University Professor of Sociology at the University of Maryland, College Park. She is also the former head of the Department of African-American Studies at the University of Cincinnati, The author holds a bachelor's degree from Brandeis University as a sociology major and a Master of Arts degree in Teaching (MAT) in Social Science Education from Harvard University. The author is not purely an academic – but was both teacher and curriculum specialist in the Boston Area. The author served as The Director of the Africana Center at Tufts University. The author is the past President of the American Sociological Association Council. Collins was the 100th president of the ASA and the first African-American woman to hold this position. From Chapter Seven of the book Intersectionality: A Foundations and Frontiers Reader – edited by Patrick Grzanka. The chapter is largely reprinted (with permission) by Grzanka and much of it originally appeared in one of Collins’ previous books called Fighting Words - p. 51-53

In this academic context, postmodern treatment of power relations suggested by the rubric of decentering may provide some relief to intellectuals who wish to resist oppression in the abstract without decentering their own material privileges. Current preoccupations with hegemony and microlevel, local politics—two emphases within post­modern treatments of power—are revealing in this regard. As the resurgence of interest in Italian Marxist Antonio Gramsci’s work illustrates (Forgacs 1988), postmodern social theorists seem fascinated with the thesis of an all-powerful hegemony that swallows up all resistance except that which manages to survive within local interstices of power. The ways in which many postmodernist theorists use the heterogeneous work of French philosopher Michel Foucault illustrate these dual emphases. Foucault’s sympathy for disempowered people can be seen in his sustained attention to themes of institutional power via historical treatment of social structural change in his earlier works (see., e.g., Foucault’s analysis of domination in his work on prisons [‘979] and his efforts to write a genealogy linking sexuality to institu­tional power [ii98oa]). Despite these emphases, some interpretations of his work present power as being everywhere, ultimately nowhere, and, strangely enough, growing. Historical context is minimized—the prison, the Church, France, and Rome all disappear—leaving in place a decontextualized Foucauldian “theory of power.” All of social life comes to be portrayed as a network of power relations that become increasingly analyzed not at the level of large-scale social structures, but rather at the local level of the individual (Hartsock 1990). The increasing attention given to micropolitics as a response to this growing hegemony, namely, politics on the local level that are allegedly plural, multiple, and fragmented, stems in part from this reading of history that eschews grand narratives, including those of collective social movements. In part, this tendency to decontextualize social theory plagues academic social theories of all sorts, much as the richly textured nuances of Marx’s historical work on class conflict (see, e.g., The Eighteenth Brumaire of Louis Bonaparte [1963]) become routinely recast into a mechanistic Marxist “theory of social class.” This decontextualization also illustrates how academic theories “empty out the more political and worldly substance of radical critiques” (West 1993, 41) and thus participate in relations of ruling. In this sense, postmodern views of power that overemphasize hegemony and local politics provide a seductive mix of appearing to challenge oppression while secretly believing that such efforts are doomed. Hegemonic power appears as ever expanding and invading. It may even attempt to “annex” the counterdiscourses that have developed, oppositional discourses such as Afrocentrism, postmod­ernism, feminism, and Black feminist thought. This is a very impor­tant insight. However, there is a difference between being aware of the power of one’s enemy and arguing that such power is so pervasive that resistance will, at best, provide a brief respite and, at worst, prove ultimately futile. This emphasis on power as being hegemonic and seemingly absolute, coupled with a belief in local resistance as the best that people can do, flies in the face of actual, historical successes. African-Americans, women, poor people, and others have achieved results through social movements, revolts, revolutions, and other collective social action against government, corporate, and academic structures. As James Scott queries, “What remains to be explained is why theories of hegemony…have…retained an enormous intellectual appeal to social scientists and historians” (1990, 86). Perhaps for colonizers who refuse, individualized, local resistance is the best that they can envision. Overemphasizing hegemony and stressing nihilism not only does not resist injustice but participates in its manufacture. Views of power grounded exclusively in notions of hegemony and nihilism are not only pessimistic, they can be dangerous for members of historically marginalized groups. Moreover, the emphasis on local versus structural institutions makes it difficult to examine major structures such as racism, sexism, and other structural forms of oppression.7 Social theories that reduce hierarchical power relations to the level of representation, performance, or constructed phenomena not only emphasize the likelihood that resistance will fail in the face of a pervasive hegemonic presence, they also reinforce perceptions that local, individualized micropolitics constitutes the most effective terrain of struggle. This emphasis on the local dovetails nicely with increasing emphasis on the “personal” as a source of power and with parallel attention to subjectivity. If politics becomes reduced to the “personal,” decentering relations of ruling in academia and other bureaucratic structures seems increasingly unlikely. As Rey Chow opines, “What these intellectuals are doing is robbing the terms of oppression of their critical and oppositional import, and thus depriving the oppressed of even the vocabulary of protest and rightful demand” (1993, 13). Viewing decentering as a strategy situated within a larger process of resistance to oppression is dramatically different from perceiving decentering as an academic theory of how scholars should view all truth. When weapons of resistance are theorized away in this fashion, one might ask, who really benefits? Versions of decentering as presented by postmodernism in the American academy may have limited utility for African-American women and other similarly situated groups. Decentering provides little legitimation for centers of power for Black women other than those of preexisting marginality in actual power relations. Thus, the way to be legitimate within postmodernism is to claim marginality, yet this same marginality renders Black women as a group powerless in the real world of academic politics. Because the logic of decentering opposes constructing new centers of any kind, in effect the stance of critique of decentering provides yet another piece of the new politics of containment. A depoliticized decentering disempowers Black women as a group while providing the illusion of empowerment. Although individual African-American women intellectuals may benefit from being able to broker the language and experiences of marginality in a commodified American academic marketplace, this in no way substitutes for sustained improvement of Black women as a group in these same settings. In contrast, groups already privileged under hierarchical power relations suffer little from embracing the language of decentering denuded of any actions to decenter actual hierarchical power relations in academia or elsewhere. Ironically, their privilege may actually increase.

**The impact is privatization and a collapse into pure ethics**

**McNay ’09** (Lois, Lecturer in Politics and Fellow of Somerville College, Oxford, “Self as Enterprise: Dilemmas of Control and Resistance in Foucault's The Birth of Biopolitics,” Theory Culture Society, 26:55. P. 67-68)

A possible objection is that **it would be incorrect to interpret Foucault’s idea of an ethics of the self as offering an account of oppositional political agency**. Certainly, Foucault repeatedly states that the idea is not intended to provide a blueprint for political action. **It merely outlines a set of ethical predispositions that provide a crucial precondition for democratic practices but have no particular entailments for an account of political action.** Such a strict demarcation of the ethical from the political seems untenable, however, in the light of the connections Foucault establishes between a critical ontology of the self and emancipation. On any reading of Foucault’s descriptions of an ethics of the self, it is clear that **he did not envisage it as a solipsistic exercise but rather as a multifaceted form of ‘practical critique’ whose subversive effects are felt in many domains of social practice:** ‘the political, ethical, social, philosophical problem of our days is . . . to liberate us both from the state and from the type of individualization which is linked to the state’ (Foucault, 1982: 216). He frequently describes the idea of an ethics of the self in the politicized terms of a ‘liberation’, a ‘struggle’, a ‘refusal’ and, on several occasions, explicitly compares its methods and aims with political movements such as feminism (Foucault, 1984b: 46–7).6 Given this, **it is difficult to see how a critical social ontology oriented to the ‘intransigence of freedom’ can be anything other than a fully political project. On this politicized reading of ethics of the self, it becomes reasonable to ask to what extent it represents a plausible basis for an oppositional political agency,** especially in the light of Foucault’s powerful analysis of the disciplinary restructuring of self as enterprise. If the later work is read through the problematic of the earlier lectures, **there seems to be a fundamental mismatch between the analytics of biopower and the idea of ethical self-formation**. To put it bluntly, how can an individualized process of ethical self-formation have sufficient resources to present a serious challenge to, or refusal of, a form of power that operates precisely through the proliferation of difference and the management of individual autonomy**?** **Foucault’s desire to locate political opposition at the level of an individual practice stems**, famously, **from his** well-documented **antipathy to Marxist and other collective plans for political action**. But 25 years on, **with** the fragmenting effects of **neoliberal governance deeply entrenched** within the fabric of many Western democracies, it is questionable whether an ethics of self can withstand co-optation into the flexible, depoliticizing spirit of capitalism**.** **As Myers puts it**: ‘although Foucault labels the activity of self-constitution a “practice of freedom” . . . **techniques of self-care are inadequate instruments for confronting the specifically depoliticizing effects of discipline and biopower, which concern the configuration of plurality’** (2008: 135). As a model of political action, **an individual ethics of the self appears to be relatively ineffective because its** **radical energies seem too vulnerable to reprivatization by the assimilating force of the self as enterprise**. Against this, it is possible to argue that ethics of the self is not only intended to be an individualized self-relation but may also denote a widespread ethos of openness to alterity intended to ground collective democratic practices.7 Even on this reading, however, **the** same **explanatory gaps remain as to how a generalized structure of feeling has sufficient force to amount to a ‘refusal’ of a pervasive and depoliticizing form of social organization**. **Missing is any indication of how a** relatively **loose and indeterminate ethos located in everyday life can be mediated into more durable and directed practices so as to constitute part of a concerted ‘struggle’ against neoliberal governance**. Indeed, against the claim that it is too demanding to interpret ethics of the self as an account of political agency, it is possible to counter that **Foucault problematically collapses politics back to ethics in so far as the contestatory force attributed to practices of self-formation is asserted rather than justified.** In short, **there is a troubling political quietism in the idea of ethics of the self which considerably weakens its counter-hegemonic potential vis-à-vis the disruption of neoliberal governance of the self.**

## 2NC

### Frames

#### This also address every Aff link claim about the surrounding “context of its deployment”. These terms provide an opening for the neoliberal encroachment. It is bett*er* to endorse the 1AC sans any such rhetoric.

Budd ‘97

John Budd is an Emeritus Prof in the College of Education and Human Development at the Univ of Missouri –“A Critique of Customer and Commodity” - College & Research Libraries – vol 58:4 - #E&F – obtained via the EBSCO Open Access Journals Database

Discussion

One of the most important things to keep in mind with regard to customers and commodities is that the language librarians use to describe their purpose and activities inevitably will define, even if they do not initially reflect, thought. For instance, even though Brown says that "it is useful to understand more about the service interaction and what it is that makes 'buying' and evaluating a service (such as reference service) different for the customer than 'buying' and evaluating a material product," she proceeds to speak of consumption and retail analogy to describe reference work in academic libraries.34 The language employed is a powerful shaping force, and that force, in this context, is tied to the discourse of consumption. Baudrillard says that "consumption is the virtual totality of all objects and messages constituted in a more or less coherent discourse. Consumption, in so far as it is meaningful, is a systematic act of the manipulation of signs [italics in original]."35 Signs, in the Saussurean linguistic sense, are composed of the totality of the signifier and the signified. The focus on the customer approach and information as commodity embodies a shift from primary attention on the signified to attention centered on the signifier. The signified is the content, concept, or idea; the signifier is an expression, a sound-image, or form. In other words, the transformation is one from substance to form.

In another sense, the transformation moves from semantics (meaning) to rhetoric (expression). Emery writes that "'Without consumers, the marketer of economic goods and services does not have a market.' Similarly, without readers the library lacks its raison d'etre. Though in one case an individual may be called a 'consumer' and in the other a 'reader,' the difference is purely semantic."36 In actuality, Emery is dismissing the semantic and championing the rhetorical. In the more thoughtful connections of library purpose to capital, a kind of schizophrenia reigns. The schizoid tendency is evident in the conflict that Repo struggles with. Although he advocates economic analysis of information, he repeatedly reminds the reader (and himself) of the use value of information ("The value of information is fully explicated in its use."37) In less thoughtful treatments certainty governs. For example, in urging the customer approach, Weingand advocates the "paradigm" of consumerism as superior to the view of the library as a public good (noted above). It seems to matter little that the language adopted is a usurpation of ideas that either do not apply or apply imperfectly to the library's situation.

Weingand's statement is not value neutral. In fact, it is an exemplar of the Foucauldian will to truth and knowledge which, as Foucault observes, "like the other systems of exclusion, relies on institutional support: it is both reinforced and accompanied by whole strata of practices," and is "profoundly accompanied by the manner in which knowledge is employed in a society, the way it is exploited, divided and, in some ways, attributed. . . . [T]his will to knowledge, thus reliant upon institutional support and distribution, tends to exercise a sort of pres-sure, a power of constraint upon other forms of discourse."38 The impact on knowledge is profound and debilitating. The effect is best expressed by Lyotard:

The nature of knowledge cannot survive unchanged within this context of general transformation. . . . The relationship of the suppliers and users of knowledge to the knowledge they supply and use is now tending, and will increasingly tend, to assume the form already taken by the relationship of commodity producers and consumers to the commodities they produce and consume—that is, the form of value. Knowledge is and will be produced in order to be sold, it is and will be consumed in order to be valorized in a new production: in both cases, the goal is exchange. Knowledge ceases to be an end in itself, it loses its "use-value."39

Finally, the discourse on customer and commodity in the academic library takes on the characteristics of ideology. Specifi-cally, it is ideological in that it asserts a dominance over other discourses, and does so through distortion of context that all but eliminates any teleological sense. As Hawkes points out, two aspects of ideology —"instinctive deferral to 'the facts' as they are immediately represented to us, and blind faith in instrumental science —are the most dangerous effects of commodity fetishism. In order for a thing to become a commodity, the coercive power of human reason must be exerted over the thing-in-itself: we must represent it as what it is not, and then take the representations for the reality."40 Ultimately, librarians need to take care with the language they adopt, and with the facility with which they use it to shape concepts. That the language of consumerism and commodification dominates beyond the sphere of libraries is not sufficient reason to accept it uncritically. The library's language, and practice, should flow from as clear an idea of purpose as possible. And librarians should examine purpose independently from the pressures of capitalism and consumption.

#### Two - Role of Ballot and Alt solves – critiquing and excising neoliberal terminology is valuable. It’s an important framework question - spills to better scholarship and awareness,

Bal ‘18

et al; P. Matthijs Bal – Professor, Lincoln International Business School University of Lincoln – “Neoliberal Ideology in Work and Organizational Psychology” - Manuscript accepted for publication in European Journal of Work and Organizational Psychology - #E&F – available at: <https://core.ac.uk/download/pdf/151432027.pdf>

We postulate a number of implications and recommendations for future research. First, it is important that within the field of WOP, researchers become more aware of the underlying (ideological) assumptions driving their research. Discourse analysis could be informative in further elucidating the ideological underpinnings of our research and how researchers justify their research in neoliberal terminology (e.g., instrumentality, business case). Only through explicit awareness and acknowledgement of fundamental assumptions of research, these can be debated, defended or changed. As 'objective' research concerns an impossibility in a social science (Greenwood & Van Buren III, 2017), research is by definition driven by interpretations of what is happening in the workplace, and ideological choices regarding what type of constructs are studied, what theories and models are designed, and how outcomes are legitimized. We advocate pluralism in relation to our field, where we can openly debate the basic assumptions underlying our research (i.e., why and for whom we are conducting our research) and how we can create more pluralism in the actual research that we do (i.e., the topics, methods, techniques and analyses). This may also help researchers to make more explicit choices regarding what can be regarded as important in the context of WOP to study 1.

(Note: The field of “WOP” – internally referenced in this ev – is an acronym for “Work and Organizational Psychology”)

**However, attributing motives is offense for us---breeds cycles of distrust and destructive politics**

**Robson ‘13**

Geoff – full-time Staff at the University of Canterbury, “How to poison your relationships in one easy step: Always assume the worst” – Every Thought Captive – April 17, 2013 – <http://geoffrobson.com/2013/04/17/how-to-poison-your-relationships-in-one-easy-step-always-assume-the-worst/>

Why assuming the worst about other people’s motives is so deadly – and how we can break the cycle. Few things are as complicated, contentious or corruptible as our motives. French thinker Francois de la Rochefaucauld captured the reality of the human condition when he said, “We would frequently be ashamed of our good deeds if the world could see the motives that produced them.” Samuel Johnson summed up the heart of the problem even more succinctly: “Actions are visible, but motives are secret.” The Bible is littered with warnings about our motives. When informing Samuel that David was his choice for King of Israel, God told him: “The LORD sees not as man sees: man looks on the outward appearance, but the LORD looks on the heart.” (1 Sam 16:7) Much of Jesus’ Sermon on the Mount is spent warning his hearers against doing outwardly impressive acts with inwardly corrupt motives (Matt 6:1-18). And in Paul’s celebrated (but often misunderstood) chapter on love, 1 Corinthians 13, he tells us that even the best actions are worthless if done without love. Our motives are so important, but so easily corrupted. Yet as tricky as motives are, there’s one sure way to make the whole issue even more complicated, hurtful and destructive: judge the motives of other people as harshly and as negatively as possible. If you’re like me, you’ll know how easy it is to fall into this trap. Sometimes it can be subconscious. “Last time someone did that to me, it meant this – so it must mean this again.” Or perhaps, “If I did that, it would mean this, so because you did that it must mean this too.” Sometimes our ability to judge others fairly is impacted because we’re hurting, so we take it out on those around us. Maybe we’ve been burned before, and don’t want to be hurt again. Maybe we’re exhausted, and our judgment suffers. Or maybe there’s really no excuse and we’re just plain sinful. Whatever the cause, pre-**judging the motives of others or assuming the worst about someone else is a recipe for relational disaster.** Every day, we observe other people’s actions or find ourselves receiving end of the consequences of those actions. Your husband gets home late from work – again! Your colleague makes a big decision that you don’t understand. Your friend fails to share that important piece of news with you. Countless possible actions – but we don’t always know why. “Why did he do it?” “What was she thinking?” And for many of us, rushing to judgment and thinking the worst of people is an all-too-easy response. Certainly, we need to beware of the opposite danger: a foolish naivety that prevents us from grasping the realities of sin or that leads us to wrongly assume that ‘what you see is what you get’ or ‘I’m sure they didn’t mean anything by it’. Living in a broken world requires great wisdom and balance. However, applying some shrewdness and common sense to our relationships is one thing. Assuming that people are operating with sinister, ulterior motives is quite another. When we fall into the trap of attributing motives and thinking the worst of others, the damage to our relationships – and to our very selves – can be massive. We’ll alienate the people around us and impair our ability to relate to them with love, kindness and generosity of spirit. We’ll find ourselves being civil to people on the outside, but inwardly nurturing resentment and using the voice in our head to curse them. We’ll infect our churches or ministries with unnecessary anger and distrust. We’ll become unable to lovingly and humbly rebuke others when that really is needed (cf. Gal 6:1). We’ll start to think of ourselves as being superior – focusing on the (perceived) sin in others’ lives, rather than the real sin in our own lives (cf. Matthew 7:1-5). We’ll miss the reality that while no one is perfect, God works in people’s lives and enables them to ‘love one another earnestly from a pure heart’ (1 Peter 1:22). Perhaps most of all, we’ll give bitterness a foothold – and the more bitter we become, the more our default position will be to think badly of others. A cycle of destruction and hurt that feeds on itself is created.

This is the other frame we are piking out of

### Case

#### They seek to change modes of violence. Competitive wins shouldn’t be the *mean*s for such change. Show solidarity through post-round convos. Validating *through EXTRINSIC wins* worse. This independently K’s their call for the ballot on a host of issues.

Kohn ‘86

This card internally quotes Edward L. Deci – a Professor of Psychology and Gowen Professor in the Social Sciences at the University of Rochester, and director of its human motivation program. He is well known in psychology for his theories of intrinsic and extrinsic motivation and basic psychological needs. With Richard Ryan, he is the co-founder of self-determination theory (SDT), an influential contemporary motivational theory. Alfie Kohn is a contemporary academic. He holds an M.A. in the social sciences from the University of Chicago. He earned a B.A. from Brown University – where he created his own interdisciplinary course of study. He has published 13 books. He writes, travels to Universities, and speaks widely on human behavior and education. Kohn has been featured on hundreds of TV and radio programs, including the "Today" show and two appearances on "Oprah"; he has been profiled in the Washington Post and the Los Angeles Times, From the Book: No Contest: The Case Against Competition – modified for language that may offend - http://www.scribd.com/doc/153712556/No-Contest-The-Case-Against-Competition-1986-de-Alfie-

The idea that trying to do well and trying to do better than others may work at cross-purposes can be understood in the context of an issue addressed by motivational theorists. We do best at the tasks we enjoy. An outside or extrinsic motivator (money, grades, the trappings of competitive success) simply cannot take the place of an activity we find rewarding in itself. "While extrinsic motivation may affect performance," wrote Margaret Clifford, "performance is dependent upon learning, which in turn is primarily dependent upon intrinsic motivation." More specifically, "a significant performance-increase on a highly complex task will be dependent upon intrinsic motivation."59 In fact, even people who are judged to be high in achievement motivation do not perform well unless extrinsic motivation has been minimized, as several studies have shown.60 Competition works just as any other extrinsic motivator does. As Edward Deci, one of the leading students of this topic, has written, "The reward for extrinsically motivated behavior is something that is separate from and follows the behavior. With competitive activities, the reward is typically 'winning' (that is, ~~beating~~ (defeating) the other person or the other team), so the reward is actually extrinsic to the activity itself."51 This has been corroborated by subjective reports: people who are more competitive regard themselves as being extrinsically motivated.62 Like any other extrinsic motivator, competition cannot produce the kind of results that flow from enjoying the activity itself. But this tells only half the story. As research by Deci and others has shown, the use of extrinsic motivators actually tends to undermine intrinsic motivation and thus adversely affect performance in the long run. The introduction of, say, monetary reward will edge out intrinsic satisfaction; once this reward is withdrawn, the activity may well cease even though no reward at all was necessary for its performance earlier. Money "may work to 'buy off one's intrinsic motivation for an activity. And this decreased motivation appears (from the results of the field experiment) to be more than just a temporary phenomenon."63 Extrinsic motivators, in other words, are not only ineffective but corrosive. They eat away at the kind of motivation that does produce results.

#### No double-bind. We didn’t say “*wins* bad”. We K’d “*solidarity-through-wins”*. Yes, we are *structurally competing* – that’s distinct from *intentional competition* – which implies the ballot’s a GOOD FORM of solidarity.

Kohn ‘86

Alfie Kohn is a contemporary academic. He holds an M.A. in the social sciences from the University of Chicago. He earned a B.A. from Brown University – where he created his own interdisciplinary course of study. He has published 13 books. He writes, travels to Universities, and speaks widely on human behavior and education. Kohn has been featured on hundreds of TV and radio programs, including the "Today" show and two appearances on "Oprah"; he has been profiled in the Washington Post and the Los Angeles Times, From the Book: No Contest: The Case Against Competition – http://www.scribd.com/doc/153712556/No-Contest-The-Case-Against-Competition-1986-de-Alfie-

Structural competitions can be distinguished according to several criteria. Competitions vary, for instance, with respect to how many winners there will be. Not everyone who applies for admission to a given college will be accepted, but my acceptance does not necessarily preclude yours (although it will make it somewhat less likely). On the other hand, only one woman in a bathing suit will be crowned Miss America each year, and if Miss Montana wins, Miss New Jersey cannot. In both of these competitions, notice that winning is the result of someone's subjective judgment. In other cases, such as arm wrestling, pre-established and reasonably straightforward criteria determine who wins. Beauty contests and college admissions also share another feature: neither requires any direct interaction among the contestants. The success of one simply rules out or reduces the chances for success of another. There is a stronger version of structural competition in which one contestant must make the other(s) fail in order to succeed himself. War is one example. Tennis is another. Whereas two bowlers competing for a trophy take turns doing the same thing and do not interfere with each other, two tennis players actively work at defeating each other. Which of these postures is in evidence depends on the rules of the game, the type of structural competition that is involved. Intentional competition is much easier to define — although its nuances are quite complex indeed, as we shall see later. Here we are simply talking about an individual's competitiveness, his or her proclivity for besting others. This can take place in the absence of structural competition, as all of us have observed: someone may arrive at a party and be concerned to prove he is the most intelligent or attractive person in the room even though no prizes are offered and no one else has given any thought to the matter. The psychoanalyst Karen Hor-ney described as neurotic someone who "constantly measures himself against others, even in situations which do not call for it."10 The reverse situation — structural competition without intentional competition — is also possible. You may be concerned simply to do the best you can (without any special interest in being better than others), yet find yourself in a situation where this entails competing. Here it is the structure rather than your intention that defines success as victory. Perhaps you are even averse to competing but find yourself unable to avoid it — an unhappy and stressful state of affairs known to many of us. The most extreme case of structural competition without intentional competition is a circumstance in which individuals are ranked and rewarded without even being aware of it. Students may be sorted on the basis of their grades even if they are not trying to defeat each other. (The distinction between the two varieties of competition is especially useful in allowing us to make sense of such a scenario.) Finally, let us take note of the rather obvious fact that competition can exist among individuals or among groups. The latter does not rule out the former; even as two corporations or nations or basketball teams are competing with each other, it is possible that the people within these groups can be vying for money or status. Competition among groups is known as intergroup competition, while competition among individuals within a group is called intragroup competition. These distinctions will prove important in later chapters. Competition is not the only way to organize a classroom or a workplace. This is hardly a controversial observation, but because we have come to take competition for granted, we rarely think about alternatives. In this book, following the lead of most social psychologists, I will be considering three ways of achieving one's goals: competitively, which means working against others; cooperatively, which means working with others; and independently, which means working without regard to others. Although we sometimes speak of an individual or a culture as being both competitive and individualistic, it is important to realize that they are not the same. There is a difference between allowing one person to succeed only if someone else does not, on the one hand, and allowing that person to succeed irrespective of the other's success or failure, on the other. Your success and mine are related in both competition and cooperation (though in opposite ways); they are unrelated if we work independently. We sometimes assume that working toward a goal and setting standards for oneself can take place only if we compete against others. This is simply false. One can both accomplish a task and measure one's progress in the absence of competition. A weightlifter may try to press ten pounds more than he did yesterday, for example. This is sometimes referred to as "competing with oneself," which seems to me a rather unhelpful and even misleading phrase. A comparison of performance with one's own previous record or with objective standards is in no way an instance of competition and it should not be confused with it. Competition is fundamentally an interactive word, like kissing, and it stretches the term beyond usefulness to speak of competing with oneself. Moreover, such sloppy usage is sometimes employed in order to argue that competition is either inevitable or benign: since nobody loses when you try to beat your own best time, and since this is a kind of competition, then competition is really not so bad- This, of course, is just a semantic trick rather than a substantive defense of competition.

#### A ballot on T does not hinder care-free. The status quo – in the debate community – solves the Aff just as well. We win on presumption.

Anderson ‘6

Amanda; Andrew W. Mellon Professor of Humanities and English at Brown University, Spring 2006, “Reply to My Critic(s),” Criticism, Vol. 48, No. 2, p. 281-290

MY RECENT BOOK, The Way We Argue Now, has in a sense two theses. In the first place, the book makes the case for the importance of debate and argument to any vital democratic or pluralistic intellectual culture. This is in many ways an unexceptional position, but the premise of the book is that the claims of reasoned argument are often trumped, within the current intellectual terrain, by appeals to cultural identity and what I gather more broadly under the rubric of ethos, which includes cultural identity but also forms of ethical piety and charismatic authority. In promoting argument as a universal practice keyed to a human capacity for communicative reason, my book is a critique of relativism and identity politics, or the notion that forms of cultural authenticity or group identity have a certain unquestioned legitimacy, one that cannot or should not be subjected to the challenges of reason or principle, precisely because reason and what is often called "false universalism" are, according to this pattern of thinking, always involved in forms of exclusion, power, or domination. My book insists, by contrast, that argument is a form of respect, that the ideals of democracy, whether conceived from a nationalist or an internationalist perspective, rely fundamentally upon procedures of argumentation and debate in order to legitimate themselves and to keep their central institutions vital. And the idea that one should be protected from debate, that argument is somehow injurious to persons if it does not honor their desire to have their basic beliefs and claims and solidarities accepted without challenge, is strenuously opposed. As is the notion that any attempt to ask people to agree upon processes of reason-giving argument is somehow necessarily to impose a coercive norm, one that will disable the free expression and performance of identities, feelings, or solidarities. Disagreement is, by the terms of my book, a form of respect, not a form of disrespect. And by disagreement, I don't mean simply to say that we should expect disagreement rather than agreement, which is a frequently voiced-if misconceived-criticism of Habermas. Of course we should expect disagreement. My point is that we should focus on the moment of dissatisfaction in the face of disagreement-the internal dynamic in argument that imagines argument might be the beginning of a process of persuasion and exchange that could end in agreement (or partial agreement). For those who advocate reconciling ourselves to disagreements rather than arguing them out, by contrast, there is a complacent-and in some versions, even celebratory-attitude toward fixed disagreement. Refusing these options, I make the case for dissatisfied disagreement in the final chapter of the book and argue that people should be willing to justify their positions in dialogue with one another, especially if they hope to live together in a post-traditional pluralist society. One example of the trumping of argument by ethos is the form that was taken by the late stage of the Foucault/Habermas debate, where an appeal to ethos-specifically, an appeal to Foucault's style of ironic or negative critique, often seen as most in evidence in the interviews, where he would playfully refuse labels or evade direct answers-was used to exemplify an alternative to the forms of argument employed by Habermas and like-minded critics. (I should pause to say that I provide this example, and the framing summary of the book that surrounds it, not to take up airtime through expansive self-reference, but because neither of my respondents provided any contextualizing summary of the book's central arguments, though one certainly gets an incremental sense of the book's claims from Bruce Robbins. Because I don't assume that readers of this forum have necessarily read the book, and because I believe that it is the obligation of forum participants to provide sufficient context for their remarks, I will perform this task as economically as I can, with the recognition that it might have carried more weight if provided by a respondent rather than the author.) The Foucauldian counter-critique importantly emphasizes a relation between style and position, but it obscures (1) the importance or value of the Habermasian critique and (2) the possibility that the other side of the debate might have its own ethos to advocate, one that has precisely to do with an ethos of argument, an ideal of reciprocal debate that involves taking distance on one's pre-given forms of identity or the norms of one's community, both so as to talk across differences and to articulate one's claims in relation to shared and even universal ideals. And this leads to the second thesis of the book, the insistence that an emphasis on ethos and character is interestingly present if not widely recognized in contemporary theory, and one of the ways its vitality and existential pertinence makes itself felt (even despite the occurrence of the kinds of unfair trumping moves I have mentioned). We often fail to notice this, because identity has so uniformly come to mean sociological, ascribed, or group identity-race, gender, class, nationality, ethnicity, sexuality, and so forth. Instances of the move toward character and ethos include the later Foucault (for whom ethos is a central concept), cosmopolitanism (whose aspiration it is to turn universalism into an ethos), and, more controversially, proceduralist ethics and politics (with its emphasis on sincerity and civility). Another version of this attentiveness to ethos and character appears in contemporary pragmatism, with its insistence on casualness of attitude, or insouciance in the face of contingency-recommendations that get elevated into full-fledged exemplary personae in Richard Rorty's notion of the "ironist" or Barbara Herrnstein Smiths portrait of the "postmodern skeptic." These examples-and the larger claim they support-are meant to defend theory as still living, despite the many reports of its demise, and in fact still interestingly and incessantly re-elaborating its relation to practice. This second aspect of the project is at once descriptive, motivated by the notion that characterology within theory is intrinsically interesting, and critical, in its attempt to identify how characterology can itself be used to cover or evade the claims of rational argument, as in appeals to charismatic authority or in what I identify as narrow personifications of theory (pragmatism, in its insistence on insouciance in the face of contingency, is a prime example of this second form). And as a complement to the critical agenda, there is a reconstructive agenda as well, an attempt to recuperate liberalism and proceduralism, in part by advocating the possibility, as I have suggested, of an ethos of argument. Robbins, in his extraordinarily rich and challenging response, zeroes in immediately on a crucial issue: who is to say exactly when argument is occurring or not, and what do we do when there is disagreement over the fundamentals (the primary one being over what counts as proper reasoning)? Interestingly, Robbins approaches this issue after first observing a certain tension in the book: on the one hand, The Way We Argue Now calls for dialogue, debate, argument; on the other, its project is "potentially something a bit stricter, or pushier: getting us all to agree on what should and should not count as true argument." What this point of entry into the larger issue reveals is a kind of blur that the book, I am now aware, invites. On the one hand, the book anatomizes academic debates, and in doing so is quite "debaterly" This can give the impression that what I mean by argument is a very specific form unique to disciplinary methodologies in higher education. But the book is not generally advocating a narrow practice of formal and philosophical argumentation in the culture at large, however much its author may relish adherence to the principle of non-contradiction in scholarly argument. I take pains to elaborate an ethos of argument that is linked to democratic debate and the forms of dissent that constitutional patriotism allows and even promotes. In this sense, while argument here is necessarily contextualized sociohistorically, the concept is not merely academic. It is a practice seen as integral to specific political forms and institutions in modern democracies, and to the more general activity of critique within modern societies-to the tradition of the public sphere, to speak in broad terms. Additionally, insofar as argument impels one to take distance on embedded customs, norms, and senses of given identity, it is a practice that at once acknowledges identity, the need to understand the perspectives of others, and the shared commitment to commonality and generality, to finding a way to live together under conditions of difference. More than this: the book also discusses at great length and from several different angles the issue that Robbins inexplicably claims I entirely ignore: the question of disagreement about what counts as argument. In the opening essay, "Debatable Performances," I fault the proponents of communicative ethics for not having a broader understanding of public expression, one that would include the disruptions of spectacle and performance. I return to and underscore this point in my final chapter, where I espouse a democratic politics that can embrace and accommodate a wide variety of expressions and modes. This is certainly a discussion of what counts as dialogue and hence argument in the broad sense in which I mean it, and in fact I fully acknowledge that taking distance from cultural norms and given identities can be advanced not only through critical reflection, but through ironic critique and defamiliarizing performance as well. But I do insist-and this is where I take a position on the fundamental disagreements that have arisen with respect to communicative ethics-that when they have an effect, these other dimensions of experience do not remain unreflective, and insofar as they do become reflective, they are contributing to the very form of reasoned analysis that their champions sometimes imagine they must refuse in order to liberate other modes of being (the affective, the narrative, the performative, the nonrational). If a narrative of human rights violation is persuasive in court, or in the broader cultural public sphere, it is because it draws attention to a violation of humanity that is condemned on principle; if a performance jolts people out of their normative understandings of sexuality and gender, it prompts forms of understanding that can be affirmed and communicated and also can be used to justify political positions and legislative agendas.