# 1nc

## offcase

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**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**.

#### Vote neg for two reasons:

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

#### Second- our Testing warrant:

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

Poscher ‘16

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

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

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

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

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

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

f) The Advantage Over Non‐Argumentative Alternatives

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

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

2. THE SEMANTICS OF AGONISTIC DISAGREEMENTS

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

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

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

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

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

#### Our testing arg *link turns* the Aff’s efforts to counter injustice. It’s also a reason to Negate their method based on external offense. Testing is the stronger mechanism for actualizing solvency for Aff and Neg impacts.

Connolly 17

William Connolly, Krieger-Eisenhower Professor of Political Science at Johns Hopkins University, Aspirational Fascism: The Struggle for Multifaceted Democracy under Trumpism, p. 694-777

If a dissident movement is to acquire momentum, the democratic Left must also identify more young leaders in multiple settings who are charismatic in democratic ways and who can inspire large constituencies as they counter the appeal of Trumpian authoritarian charisma. For Trump is a charismatic adversary whose rhetorical effectiveness has not yet been measured adequately by enough of his critics. He and Hitler are both right about one thing: there is a tendency in the professoriate to downplay the role of rhetoric in politics and the ubiquitous importance of the visceral register of culture to public life. We often love writing more than speech. There is thus a corollary reticence to working hard enough to counter a rhetoric organized around authoritarian leadership, militarism, whiteness, and aggressive national assertion with another mode that draws on our higher angels to encourage horizontal modes of organization and an ethos of presumptive generosity as it articulates the differential class, regional, and urban dangers of rapid climate change.

We both need to learn more about Trump and to rebut his rhetorical style with positive styles of engagement. Bernie Sanders shined a bright light here, too. For visceral group identifications do not always and only pass through the filter of a narcissistic leader, as a few steeped in Freudianism may think. They can also be mediated by horizontal connections on both the visceral and refined registers of cultural life— connections forged across a variety of associational meetings, church assemblies, blogs, family gatherings, classrooms, neighborhood groups, school boards, tavern conversations, unions, and so on— as we forge reciprocal ties of presumptive generosity and care.[ 12] Charismatic, pluralizing, egalitarian leaders support such horizontal connections and infusions in the ways they provide Democratic leadership.[ 13] It is possible to improve the internal ethos of the United States while coming to terms more nobly with its new condition in the world, even if the probabilities may point in another direction. Indeed, it is imperative to try to accomplish both together, because failure to do so risks unleashing the vast military power of the country in a series of destructive wars that could be calamitous for the world. Think merely of how climate change— a gathering planetary force massive in destructive power— is subject to denial in part because those who seek to return to an old “greatness” are told that such a return requires the modes of industry, mining, imperial power, triumphalism, and fossil fuel energy that powered growth the last time around.

Trump’s attack upon the media and the professoriate is strategically chosen in this respect. His tweets calling the media “the enemy of the people” and carriers of “fake news” must never be treated lightly. Above all, this is not a site, if there is any site, at which the Left should seek to “accelerate the contradictions” of the order to speed up its collapse.[ 14] The latter route, however unintentionally, is a route to fascism.

Trump’s goal is to trap the media in a bind: he hopes he can win if the media evades the charges he makes; he hopes he can win if they reply simply by correcting the evidence when he endlessly accuses them of fake news. The best strategy, perhaps, is to keep exposing how the Big Lie works, to respond with evidence-based claims to each Lie as you also explain why he pursues it, to play up dramatically how critical a press free from state control or intimidation is to a democratic society, and to explore the real and neglected grievances of those constituencies most tempted to embrace Trump tweets. Yes, the media often deserves intense criticism from the democratic Left for its softness on a neoliberal corporate culture, but the Left must also expose and attack Trumpian intimidation of it. It recently seemed unwise to me, for instance, when a few on the Left reenforced Trump and Putin denials of the Putin intervention in the election with statements that came close to describing this as fake news. The media and professoriate will both be vicious targets of Trump attacks for the next four years (at least), as he deflects attention from his probable collusion with Putin and the failure of his policies to uplift the working class. It is possible for critics on the Left to chew gum and walk at the same time, in this case, to hold the media accountable as you also defend it against vicious Trumpian assaults that could get worse as his false promises continue to encounter harsh realities.

I have doted a bit on the working class not because it could today become the center of a new movement toward egalitarian democracy oriented to both pluralism and the new planetary condition. We do not inhabit a Fordist era in which much of the working class is centered in large factories. That class is now even more dispersed geographically and underorganized into unions. It is often distributed in small clusters in fast-food restaurants, shopping mall stores, janitorial duties, farm work, small factories, prison work, security assignments, subordinate administrative duties, hospital services, and so on. Moreover, its dispersed distribution makes it easier for those outside those circumstances to ignore or deny its grievances, as they look merely at yearly income statistics and fail to register how differences in lifetime income and an evolving infrastructure of consumption make it harder for many with apparently decent incomes to make ends meet. Its very dispersion, disorganization, and uneven geodistribution, however, mean that, intelligently engaged, it could also forge indispensable elements in a vibrant pluralism that has been on the move for a while without its active involvement, a pluralism that can also constitute a key bulwark against aspirational fascism. That is why it is wise to appreciate the working class today as one dispersed minority among others.

**Third- our Preparation warrant:**

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

### frames

#### First – our links:

#### The 1AC advances a totalizing set of “oppressors” and “oppressed” groups. It’s not that the concept of oppression’s false – but the frame *overdetermines* and *hampers resistance*.

Condit ‘93

Celeste Condit is a Distinguished Research Professor in the Department of Communication at the University of Georgia. The author also serves as a faculty member for the University of Georgia’s Franklin College Institute for Women's Studies. “The critic as empath: Moving away from totalizing theory”, Western Journal of Communication, 57:2, 178-190

If critics cannot avoid a partisan inflection in their work, then it becomes incumbent that they demonstrate that they are, at the least, on the side of good and decency. Given the current configuration of academic theory and the political origins of the majority of the most passionate rhetorical critics, this has meant identification with the "oppressee" against the "oppressor."2 Employing critical methods based on "experiential" contact with a text or on socially situated personal responses to a text, partisan critics have offered readings that propose to even the balance between powerful elites and disempowered or marginal groups. Such critics often presume that there is what Philip Wander has called a "third persona" omitted from the public discourse, and they attempt to give voice to these groups, or at least to provide a shield of counter-argument against the dominant elites and the status quo. This group of critics has offered potent analyses of important critical texts that have indeed challenged the legitimacy of "things as they are" or have at the least contributed profusely to the marketplace of ideas. These critical contributions have been guided by adherence to a very different myth about society from that held by the universalists. In place of the universalized community, the partisans describe a sharply divided and two-sided combat. The partisan myth holds that there are dominant, empowered and privileged groups of persons, who act unjustly to oppress other groups. Men, whites, Europeans, and the rich constitute the empowered, while women, people of other colors, Africans, and the poor constitute the most paradigmatic of the oppressed groups. The partisan critics offer the hope that such a system of unjust power relations might be overturned. They believe that by "evening the balance" they can produce a "state of affairs in which there will be no exploitation or oppression, in which an all-embracing subject, namely self-aware mankind, exists, and in which it is possible to speak of a unified theoretical creation and a thinking that transcends individuals."3 They believe, moreover, that this transcendent state can be achieved by identification with the oppressed, not solely because there will be a levelling of power relationships, but because the standpoint of the oppressed is epistemologically superior: The standpoint of the oppressed is not just different from that of the ruling class; it is also epistemologically advantageous. It provides the basis for a view of reality that is more important than that of the ruling class and also more comprehensive. It is more impartial because it comes closer to representing the interests of society as a whole; whereas the standpoint of the ruling class reflects the interests of only one section of the population, the standpoint of the oppressed represents the interests of the totality in that historical period . . . . the standpoint of the oppressed includes and is able to explain the standpoint of the ruling class.4 There are, of course, a plethora of versions of this myth. An older version held that elites "imposed" their will from the top down through their control of the means of communication. Newer versions hold that oppressed groups are able to make their own readings of cultural products and are thereby able to resist the impositions of the upper classes, at least in some spaces and ways. In either case, however, the mythic identities of "oppressor-oppressee" are central to the reading. They overdetermine that there will be clear-cut victims and villains in the readings and they indicate who those villains and victims will be. The social value of such criticism arises from several sources: from the creativity of the critics who are able to locate these mythic positions in ever-new and unsuspected places, from the critical audience's approval of the myth and enjoyment in its re-enactment, and from whatever small effect it may have in empowering the disempowered. There are, however, problems with this second paradigm of critical practice as well. Criticism in this school increasingly has come to resemble the universalist approach, because the theory that guides it has become closed and totalistic. Partisan critique has become increasingly the servant of the over-arching conceptual structure, whether it appears in its mythic form or in a theoretical elaboration. Such critical readings respond not to the conditions of the speaking agents, but to the demands of theory itself. Thus, one studies "homelessness," but the study is destined to tell us nothing we did not already know about homelessness. Instead, its primary function is to advance the critic's own pet theory. The only hegemony at stake becomes that of the individual critic and his (or occasionally her) school against other academic critics. Criticism in the service of theory can be useful, but if it is the only criticism that exists, it risks stagnation. While it has become a commonplace that all criticism starts with implicit theory, it is not necessary that such criticism end firmly boxed within the original theory. Yet this is precisely what happens with too many pieces of criticism guided by the partisan critical approach. Of course, if the goal is to resist the power structure, novelty may not be desirable, and repetition may not be a negative feature. The question remains, however, once we have saturated the academic critical space with a replaying of the myth of the omnipotent oppressor and the powerless oppressee, thus proving ourselves unable to influence the power structure by our elegant scribblings in academic journals, then what?

#### 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.”

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

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

#### Four – its fair: frame subtraction auto gives the aff ground – just defend the stances of the 1AC. There are net benefits to this Alt other than just the Condit cards. It applies to other frames that we’ve critiqued.

## case

### 1nc – presumption/solvency

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

### 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.

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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**

**Reject totalization – even if it’s “strategic essentialism” that’s violent and turns their offense**

**McLaurin ’12** (internally quoting Professional Philosopher Lawrence Blum, Distinguished Professor of Liberal Arts and Education and Professor of Philosophy @ UMass-Boston. Virginia A. McLaurin is a graduating MA student in the Department of Anthropology and Sociocultural Anthropology at Amherst. “Stereotypes of Contemporary Native American Indian Characters in Recent Popular Media” – Submitted to the Graduate School of the University of Massachusetts Amherst in partial fulfillment of the requirements for the degree of MASTER OF ARTS – May 2012 – <http://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1941&context=theses>)

Philosopher Lawrence Blum, in writing on stereotypes as a general phenomenon,¶ attempts a cohesive definition of stereotyping generalizable across a range of social¶ interactions. “Stereotypes are false or misleading generalizations about groups held in a¶ manner that renders them largely, though not entirely, immune to counterevidence… A¶ stereotype associates a certain characteristic with the stereotyped group (Blum 2004:¶ 251).” Blum goes on to provide additional characteristics inherent to the act of¶ stereotyping, which can be synthesized into a basic definition for the act of stereotyping:¶ he limits the stereotyped group to the domain of human beings, states that the group is of¶ a particular salience (ethnicity, gender, religion, etc. or unique combination thereof), is¶ portrayed as “fundamentally the same” (Blum 2004:261), and cannot be conceived of¶ regularly otherwise. “Additionally,” summarizes one philosophy paper on Blum, “[the¶ stereotyped group] has characteristic Y, where Y is a characteristic with a large¶ graduation of moral significance (from bad stereotypes to the alleged good stereotypes),¶ and Y is either false or misleading” (Suffis 2012: 4).¶ Blum states that the characteristic (Y) may have a wide range on the moral scale¶ of the stereotyping person or group, in order to account for the “bad” stereotypes as well¶ as the “good” stereotypes. The removal of this passage can be argued on the basis that¶ the Y characteristic need not register as morally significant to either group implicated in¶ the stereotype. Features that are morally neutral to all persons involved in a stereotype¶ can nevertheless constitute stereotypes. Any statement that envisions a group of people,¶ grouped together based on culturally constructed race, region, age, or another salient¶ feature as “fundamentally the same” robs them of their individuality and group diversity¶ (Blum 2004:261). Blum argues that **as methods of dehumanization, these actions are**¶ **inherently ethically problematic**. By this rationale, even when both groups involved in¶ the stereotype (the stereotyper and the stereotyped) find nothing morally objectionable to the generalization being made, the kind of sweeping generalization of a group that acts to¶ flattens difference and cannot allow for individuality becomes a stereotype, and in¶ Blum’s estimation has a dehumanizing (and thus a negative effect) on the group being¶ stereotyped. Alvin M. Josephy (1984:31) agrees, arguing that stereotypical images of¶ Native people have “defamed and dehumanized Indians” by dent of their very existence.

**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.

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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.