# Aff vs New School BL- ADA Round 5

# MSU KV KAff 1ac

### Adv One

#### Advantage One is Federalism

#### The status quo upholds “Parker immunity” – a doctrine that doesn’t account for interstate spillovers.

Rosch 12 [J. Thomas Rosch, Commissioner, Federal Trade Commission 10-3-2012 https://www.ftc.gov/sites/default/files/documents/public\_statements/returning-state-action-doctrine-its-moorings/121003stateaction.pdf]

The FTC’s State Action Report

Over a decade ago, the FTC became concerned that the lower courts had expanded the scope of the state action doctrine beyond what the Supreme Court had intended. In 2001, the FTC established a State Action Task Force, which issued a Report two years later that analyzed the current state of the law, identified areas of concern, and recommended clarifications to the law.28 The Report observed that the scope of the state action doctrine had expanded dramatically since first articulated by the Supreme Court in 1943. The doctrine had become unmoored from its original objectives, the report concluded, and was frequently invoked to protect private commercial interests with no relation to state policy.

The report identified a number of specific concerns with the way in which some lower courts had applied the state action doctrine. Chief among these was a persistent weakening of the clear articulation and active supervision requirements. In particular, some courts had found that a legislative grant of general corporate powers satisfied the clear articulation requirement. Although the exercise of these powers in the private sector had no particular antitrust significance, some courts had reached the opposite conclusion when the powers were granted through legislation.

The Report also found that there was a lack of clear standards to guide the application of the active supervision requirement. Without guidance on how to implement the various formulations of the requirement articulated by the lower courts, the active supervision requirement had had a minimal impact.

The Task Force raised several other concerns. Some courts, according to the Report, had interpreted the state action doctrine in a manner that ignored interstate spillovers, which forced the citizens of one state to absorb the costs imposed by another state’s regulations. In addition, some courts had interpreted the doctrine to shield virtually any municipal activity, despite the fact that municipalities were increasingly engaging in business on a for-profit basis, while simultaneously using their law-making power to block competitive challenges.

#### Our arg is not “State’s Rights are categorically good”. Rather, failing to account for out-of-State externalities means State reforms seem better than they truly are. Limiting Parker is key.

Sack 21 [John Sack, J.D., Duke Law School, Class of 2022, B.S. University of Michigan, 2019, 2021 – modified for language that may offend - https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1196&context=djclpp\_sidebar]

III. DOCTRINAL CRITICISM

Although the Court has continued to re-affirm Parker v. Brown’s central holding, many have criticized the Parker doctrine. Both scholars and the Federal Trade Commission (FTC) have highlighted problems with the doctrine and offered a number of solutions for how to remedy its faults.63

The first common critique of the doctrine is that it does not account for out-of-state economic effects. Unless a regulation runs afoul of another constitutional barrier, no consideration of interstate spillovers applies.64 One need not look farther than Parker itself to see how the state action doctrine can impose costs on out-of-state residents, even though those residents have diminished political capital in the state. At the time Parker was decided, between 90 and 95 percent of raisins produced in California entered interstate commerce and California provided almost all of the nation’s raisins.65 Most American raisin consumers lived outside of California and had no political means to oppose the state’s legislative program, yet they bore the costs of California’s state-sanctioned monopoly.66

Second, similar concerns about political representation animate critiques of Parker immunity. The policy at issue in Parker restricted output and artificially raised prices, two results federal antitrust law generally seeks to prohibit.67 Although the benefits of such a program were borne almost exclusively by California, the costs of the program were incurred by raisin consumers across the nation.68 The political incentives to promote such a program follow closely with economic costs and benefits.69 California raisin producers have a strong incentive to lobby their own government to install such a program, but it would be nearly impossible for non-California residents to challenge such a policy through the normal political channels.70 The government of California is not the appropriate body to properly weigh the benefits to in-state raisin producers with the costs to out-of-state consumers, yet the Parker doctrine grants California per se immunity on federalism grounds.71 Although the California program was implicitly endorsed by Congress, one is just as likely to find similar programs with no similar implicit endorsement.72

The U.S. Constitution embodies a system of federalism where the federal government is sovereign in some respects, and the several states are sovereign in others.73 This system of federalism gives states the power to regulate local matters and the federal government the power to regulate issues that states are less suited to regulate.74 When costs spill over into other states, the national government becomes the appropriate body to regulate the costs and benefits of such a program.75 The Court has recognized such spillover effects, and how political actors, even government entities, can act solely in self-interest.76 Such state self-interest can directly harm consumers outside of its territorial jurisdiction.77

Parker immunity, as it ~~stands~~ (exists), runs counter to longstanding ideals of national unity that harken back to the Founding era. The law has long prohibited states from imposing excessive costs on the nation as a whole, solely for the purpose of furthering its own intrastate policy interests. McCulloch v. Maryland illustrates the Court’s wariness of self-serving state action.78 In McCulloch, Chief Justice Marshall held that states may not tax the national bank, as they would be wielding power against the whole of the United States, even though the whole of the United States is not represented by each state.79 Similar to a state tax being problematic since it is the part acting on the whole, anticompetitive restraints by the states would unduly impose costs on the nation. The people of the United States, acting through Congress, christened competition and free markets through the Sherman Act.80 Just as one state could not tax the resources of the United States, one state should not be allowed to use state policy to burden the national economy. Because the potential costs to state-created monopolies are so high,81 federal policy should prohibit states from allocating those costs beyond their borders. Any state that wishes to impose monopoly costs outside of its borders to benefit itself and undermine competition should be carefully scrutinized when it does so. This scrutiny would not be fatal-in-fact for the legislation, but it should be enough for states to second-guess an attempt to enrich itself to the detriment of its sister states.

IV. PROPOSED SOLUTIONS

The Sherman Act, and specifically Parker immunity, should be interpreted in light of the above concerns. After all, the Sherman Act is the standard-bearer for the U.S. free market system, and so our interpretation of it should evolve with our understanding of constitutional principles and economic conditions.82 Justice Burger’s concurrence in City of Lafayette elaborates on this point:

Our conceptions of the limits imposed by federalism are bound to evolve, just as our understanding of Congress’ power under the Commerce Clause has evolved. Consequently, since we find it appropriate to allow the ambit of the Sherman Act to expand with evolving perceptions of congressional power under the Commerce Clause, a similar process should occur with respect to “state action” analysis under Parker. That is, we should not treat the result in the Parker case as cast in bronze; rather, the scope of the Sherman Act’s power should parallel the developing concepts of American federalism.83

As states impose costs on each other through state-sanctioned monopolies, the Court’s understanding of federalism and the Commerce Clause counsels scrutiny of the Parker doctrine. An entirely new doctrine is not necessary to curtail Parker immunity. Rather, the issue can be resolved by applying Parker immunity in light of the American dual system of federalism and the Commerce Clause. Modern scholarship critiques the lack of concern for interstate spillovers. By that token, the modern Parker doctrine fails to account for economic efficiency and undermines political representation values meant to be protected by federalism.84 So while scholars almost universally recognize that interstate economic spillovers are problematic, there is no consensus on what remedy is most appropriate.

#### Well-crafted models are ideal – but the iterative learning process is only *accurate* if costs are internalized

Adler 12 [Jonathan, John Verheij Memorial Professor of Law and Director of the Center for Busi‐ ness Law & Regulation, Case Western Reserve University School of Law, “INTERSTATE COMPETITION AND THE RACE TO THE TOP,” March 2, www.harvard-jlpp.com/wp-content/uploads/2013/.../35\_1\_89\_Adler.pdf]

Not only does decentralization enable policymakers to take advantage of localized information about policy problems and their potential solutions, but decentralization and interjurisdictional competition also foster policy discovery and policy entrepreneurship. Decentralization allows for states to act, in Jus‐ tice Brandeis’s famous characterization, as “laboratories of democracy.”32 Different states may adopt different approaches to various public policy concerns, whether because of regional differences, variable preferences, or different expectations about the viability or practicality of competing policy approaches. State‐level policy initiatives often are experiments from which others may learn. States learn from each others’ successes and failures, fostering an iterative process through which state‐level policy can improve over time.

Allowing state‐level experimentation also reduces the risks of policy failures. When states try different things, all of the proverbial eggs are not in a single basket. If the policy succeeds, other states retain the ability to follow suit (as does the federal government, which has often modeled federal measures on successful state initiatives).33 If the policy fails, however, only one jurisdiction must undo it, and others can learn to avoid such mistakes. This discovery process can be slow and messy, but the federal alternative—as it exists in practice—is no better.

Even though there is a strong case for presuming that decentralization is favorable, it is rebuttable. Leaving policy questions in state hands might be desirable more often than not, but in some instances there are persuasive justifications for federal intervention. Appropriate federal intervention can even reinforce the competitive dynamic across jurisdictions.

Perhaps the most compelling case for federal intervention is the existence of interstate spillovers, such as pollution generated in one state that crosses into another.34 If, for example, pollution generated in one state causes problems in another state, there is a case for federal action. Allowing such spillovers to exist undermines interjurisdictional competition because spillovers enable states to extraterritorialize the costs of their own policy decisions onto other jurisdictions.35 In a truly competitive dynamic, on the other hand, each jurisdiction would bear the costs and reap the benefits of its own decisions.

#### Pricing-in State spillovers improves the data set that informs well-crafted actions.

Adler 12 [Jonathan, John Verheij Memorial Professor of Law and Director of the Center for Busi‐ ness Law & Regulation, Case Western Reserve University School of Law, “INTERSTATE COMPETITION AND THE RACE TO THE TOP,” March 2, www.harvard-jlpp.com/wp-content/uploads/2013/.../35\_1\_89\_Adler.pdf]

Federalism is an essential part of the Constitution’s design. The division of sovereign power between the States and the federal government helps foster interjurisdictional competition, which, in turn, checks government power.1 Provided a right of exit is maintained, the excessive imposition of economic burdens in one jurisdiction will cause taxpayers and businesses to flee to other jurisdictions. For this reason, federalism often is seen as a friend of the free market.2 The existence of competing jurisdictions disciplines state intervention in the marketplace.3 But it would be a mistake to assume that interjurisdictional competition invariably favors market‐oriented policies, at least insofar as alternative policy measures would enhance the welfare of state residents. Federalism is not just for free marketeers.

Provided states cannot externalize the costs of their own policy choices, robust interjurisdictional competition facilitates the enactment of better public policy at the state level.4 Rather than inducing a “race to the bottom,” such competition can create a race toward the top.5 Although those of us who generally favor freer markets believe federalism will advance that cause, those who believe more stringent regulation is welfare‐enhancing should support interjurisdictional competition too. On both theoreticaland empirical grounds, competition among jurisdictions is a powerful means to discover and promote the policies that are most effective at providing people with what they desire.

#### With or without government, biological and synthetic tech is inevitable. Accurate data from state regulatory experiments avoids downsides and maximize benefits.

McGinnis 11

(John, George C. Dix Professor of Law, Northwestern Law School, “LAWS FOR LEARNING IN AN AGE OF ACCELERATION,” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3404&context=wmlr>)

The twenty-first century’s information age has the potential to usher in a more harmonious and productive politics. People often disagree about what policies to adopt, but the cornucopia of data that modern technology generates can allow them to better update their beliefs about policy outcomes on the basis of shared facts. In the long run, convergence on the facts can lead incrementally to more consensus on better policies. More credible factual information should over time also help make for a less divisive society, because partisans cannot as easily stoke social tensions by relying on false facts or exaggerated claims to support conflicting positions. Thus, a central task of contemporary public law is to accelerate a politics of learning whereby democracy improves a public reason focused on evaluating policy consequences. Government should be shaped into an instrument that learns from the analysis of policy consequences made available from newly available technologies of information.1 Greater computer capacity is generating more empirical analysis.2 The Internet permits the rise of prediction markets that forecast policy results even before the policies are implemented.3 The Internet also creates a dispersed media that specializes in particular topics and methodologies, gathers diverse information, and funnels salient facts about policy to legislators and citizens.4 But a public reason focused on policy consequences will improve only if our laws facilitate it. For instance, constitutional federalism must be reinvigorated to permit greater experimentation across jurisdictions, because with the rise of empiricism, decentralization has more value for social learning today than ever before.5 Congress should include mandates for experiments within its own legislation making policy initiatives contain the platforms for their own selfimprovement.6 Creating a contemporary politics of democratic updating on the basis of facts is a matter both of great historical interest and of enormous importance to our future. In the historical sweep of ideas, a government more focused on learning from new information moves toward fulfilling the Enlightenment dream of a politics of reason—but a reason based not on the abstractions of the French Revolution, but instead on the hard facts of the more empirical tradition predominating in Britain. By displacing religion from the center of politics, the Enlightenment removed issues by their nature not susceptible to factual resolution, permitting a focus on policies that could be improved by information.7 The better democratic updating afforded by modern technology can similarly increase social harmony and prosperity by facilitating policies that actually deliver the goods. For the future, a more consequentially informed politics is an urgent necessity. The same technological acceleration that potentially creates a more information-rich politics also generates a wide range of technological innovation—from nanotechnology to biotechnology to [AI] artificial intelligence. Although these technologies offer unparalleled benefits to mankind, they may also create catastrophic risks, such as rapid environmental degradation and new weapons of mass destruction.8 Only a democracy able to rapidly assimilate the facts is likely to be able to avoid disaster and reap the benefits inherent in the technology that is transforming our world at a faster pace than ever before. Every industry that touches on information—book publishing, newspapers, and college education to name just a few—is undergoing a continuous series of revolutionary changes as new technology permits delivery of more information more quickly at lower cost. The same changes that are creating innovation in such private industries can also quickly create innovation in social governance. But the difference between information-intensive private industries and political institutions is that the latter lack the strong competitive framework for these revolutions to occur spontaneously. This Essay thus attempts to set out a blueprint for reform to make better use of some available information technologies. Part I describes the reality of technology acceleration as the acceleration both creates the tools for democratic updating and prompts its necessity. Technological acceleration is the most important development of our time—more important even than globalization. Although technologists have described and discussed its significance, its implications for law and political structure have been barely noticed. Part II briefly discusses how better social knowledge can change political results. A premise of the claim is that some political disagreements revolve about facts, not simply values. As a result, better social knowledge can help democracies design policies to achieve widely shared goals. Social knowledge energizes citizens to act on those encompassing interests, like improved public education, because they come to better recognize the policy instruments to advance those interests. Better social knowledge provides better incentives for citizens to vote on these interests. Part III considers the mechanisms for creating a contemporary politics of democratic updating that begins to meet the needs of the age of accelerating technology. It focuses on two of the new resources that can have substantial synergies in improving social common knowledge and shows how an increase in common knowledge can systematically improve political results by providing better incentives for citizens to work for encompassing social goods. First, Part III considers the improvement in empirical analysis of social policy that flows from increasing computational capacity. It then discusses how specialized and innovative media does much more than disseminate opinions: it widely distributes facts and factual analysis. The combination of these technologies can better discipline experts and representatives, providing stronger incentives for them to update on the basis of new facts. Part IV discusses the information-eliciting rules that will maximize the impact of new technologies of information. These steps include a program of restoring, where possible, governmental structures that permit appropriate decentralization for experimentation, empirical testing, and learning. Congress and regulatory agencies should structure legislation and regulations to include social experiments when such experiments would help resolve disputed matters of policy. The Supreme Court should generally refrain from imposing new substantive rights for the nation so that it is easier to evaluate the consequences of different bundles of rights chosen by the states. But it should also protect the dispersed media, like blogs, from discriminatory laws, because this dispersed media plays a crucial role in modern policy evaluation. In short, the Supreme Court needs to emphasize a jurisprudence fostering social discovery and the political branches need to create frameworks for better social learning. Constitutive structures encouraging and evaluating experimentation become more valuable in an age where better evaluation of social experiments is possible. I. TECHNOLOGICAL ACCELERATION It is the premise of this Essay that technological acceleration is occurring and that our political system must adapt to the world it is creating. The case for technological acceleration rests on three mutually supporting kinds of evidence. First, from the longest-term perspective, epochal change has sped up: the transitions from hunter-gatherer society to agricultural society to the industrial age each took progressively less time to occur, and our transition to an information society is taking less time still. Second, from a technological perspective, computational power is increasing exponentially, and increasing computational power facilitates the growth of other society-changing technologies like biotechnology and nanotechnology. Third, even from our contemporary perspective, technology now changes the world on a yearly basis both in terms of hard data, like the amount of information created, and in terms of more subjective measures, like the social changes wrought by social media. From the longest-term perspective, it seems clear that technological change is accelerating and, with it, the basic shape of human society and culture is changing.9 Anthropologists suggest that for 100,000 years, members of the human species were hunter-gather- ers.10 About 10,000 years ago humans made a transition to agricultural society.11 With the advent of the Industrial Revolution, the West transformed itself into a society that thrived on manufacturing.12 Since 1950, the world has been rapidly entering the information age.13 Each of the completed epochs has been marked by a transition to substantially higher growth rates.14 The period between each epoch has become very substantially shorter.15 Thus, there is reason to extrapolate to even more and faster transitions in the future. This evolution is consistent with a more fine-grained evaluation of human development. Recently, the historian Ian Morris has rated societies in the last 15,000 years on their level of development through objective benchmarks, such as energy capture.16 The graph shows relatively steady, if modest, growth when plotted on a log linear scale, but in the last 100 years development has jumped to become sharply exponential.17 Morris concludes that these patterns suggest that there may be four times as much social development in the world in the next 100 years than there has been in the last 14,000.18 The inventor and engineer Ray Kurzweil has dubbed this phenomenon of faster transitions “the law of accelerating returns.”19 Seeking to strengthen the case for exponential change, he has looked back to the dawn of life to show that even evolution seems to make transitions to higher organisms ever faster.20 In a more granulated way, he has considered important events of the last 1000 years to show that the periods between extraordinary advances, such as great scientific discoveries and technological inventions, have decreased.21 Thus, both outside and within the great epochs of recorded human history, the story of acceleration is similar. The technology of computation provides the second perspective on accelerating change. The easiest way to grasp this perspective is to consider Moore’s Law. Moore’s Law—named after Gordon Moore, one of the founders of Intel—is the observation that the number of transistors that can be fitted onto a computer chip doubles every eighteen months to two years.22 This prediction, which has been approximately accurate for the last forty years,23 means that almost every aspect of the digital world—from computational calculation power to computer memory—is growing in density at a similarly exponential rate.24 Moore’s Law reflects the rapid rise of computers to become the fundamental engine of mankind in the late twentieth and early twenty-first centuries.25 The power of exponential growth is hard to overstate. As the economist Robert Lucas has said, once you start thinking about exponential growth, it is hard to think about anything else.26 The computational power in a cell phone today is a thousand times greater and a million times less expensive than all the computing power housed at MIT in 1965.27 Projecting forward, the computing power of computers twenty-five years from now is likely to prove a million times more powerful than computing power today. To be sure, many people have been predicting the imminent death of Moore’s Law for a substantial period now,29 but it has nevertheless continued. Intel—a company that has a substantial interest in accurately telling software makers what to expect—projects that Moore’s Law will continue at least until 2029.30 Ray Kurzweil shows that Moore’s Law is actually part of a more general exponential computation growth that has been gaining force for over a 100 years.31 Integrated circuits replaced transistors that previously replaced vacuum tubes that in their time had replaced electromechanical methods of computation.32 Through all of these changes in the mechanisms of computation, its power increased at an exponential rate.33 This perspective suggests that other methods under research—from carbon nanotechnology to optical computing to quantum computing—are likely to continue growing exponentially even when silicon-based computing reaches its physical limits.34 Focusing on the exponential increase in hardware capability may actually understate the acceleration in computational capacity in two ways. First, a study considering developments in a computer task using a benchmark for measuring computer speed over a fifteen-year period suggests that the improvements in software algorithms improved performance even more than the increase in hardware capability.35 Second, computers are interconnected more than ever before through the Internet, and these connections increase collective capacity, not only because of the increasing density among computer connections, but because of the increasing density of connections among humans made possible by computers. The salient feature of computers’ exponential growth is their tremendous range of application compared to previous improvements. Almost everything in the modern world can be improved by adding an independent source of computational power. That is why computational improvement has a far greater social effect than improvements in technologies of old. Energy, medicine, and communication are now being continually transformed by the increase in computational power.36 As I will discuss in Part II, even the formulation of new hypotheses in natural and social science will likely be aided by computers in the near future. The final perspective on accelerating technology is the experience that the contemporary world provides. Technology changes the whole tenor of life more rapidly than ever before. At the most basic level, technological products change faster.37 Repeated visits to a modern electronics store—or even a grocery store—reveal a whole new line of products within very few years. In contrast, someone visiting a store in 1910 and then again in 1920—let alone in 1810 and 1820—would not have noticed much difference. Even cultural generations move faster. Facebook, for instance, has changed the way college students relate in only a few years,38 whereas the tenor of college life would not have seemed very different to students in 1920 and 1960. Our current subjective sense of accelerating technology is also backed by more objective evidence from the contemporary world. Accelerating amounts of information are being generated.39 Information, of course, is a proxy for knowledge. Consistent with this general observation, we experience exponential growth in practical technical knowledge, as evidenced by the rise in patent applications.40 Thus, the combination of data from our present life, together with the more sweeping historical and technological perspectives, makes a compelling case that technological acceleration is occurring. It is this technological acceleration that creates both the capacity and the need for improving collective decision making. As technology accelerates, it creates new phenomena, from climate change to biotechnology to artificial intelligence of a human-like capacity. These technologies may themselves have very large positive or negative externalities and may require government decisions about their prohibition, regulation, or subsidization to forestall harms and capture their full benefits. They may also cause social dislocations, from unemployment to terrorism, that also require certain collective decisions. Society can best handle these crises not only by making better social policy to address them directly but by improving social policy more generally to create both more resources and more social harmony to endure them. Thus, society must deploy information technology in the service of democratic updating if it is to manage technological acceleration

#### Synthetic-Bio viruses already sit in labs. They cannot be wished away. Lab accidents will kill millions. Some positive regulatory scheme is needed.

Wilson ‘13

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States should consider creating an international treaty to regulate emerging technologies if they perceive these technologies to pose a GCR/ER. This section considers the current and future risks and benefits posed by three emerging technologies--bioengineering, [\*313] nanotechnology, and AI. This section concludes that bioengineering is the only emerging technology that poses an immediate GCR/ER, while nanotechnology and AI pose future GCR/ERs. 1. Bioengineering Simply defined, bioengineering is the "engineering of living organisms." n23 Bioengineering is commonly associated with genetically modified ("GM") foods made from crops that scientists develop to have qualities like pest resistance or increased nutrition. However, bioengineering is rapidly expanding beyond agriculture into fields like medicine, disease control, and life-extension. The technology behind bioengineering has also developed quickly, with scientists now able to understand and manipulate life at the molecular level such that biology is viewed as a "machine" that can be tweaked, like in genetic engineering, or even built from the ground up, like in synthetic biology. n24 While breakthroughs in bioengineering research could significantly benefit mankind and the environment, bioengineering research can also be misused to the detriment of humans, animals, and environmental health. n25 Such "dual use" research currently poses significant risks to humankind and even greater risks in the future. Furthermore, both current and future bioengineering technologies pose the risk of an accident that has significant detrimental effects. In exploring these issues, this section demonstrates that bioengineering poses an immediate GCR/ER. a. Current technology Bioengineering is already widely used to modify existing organisms, and scientists are on the cusp of creating entirely synthetic organisms. For example, scientists controversially use bioengineering to "improve" natural biological products and activities, resulting in increased nutrient value, bigger yields, and insect and disease resistance n26 in various types of crops. n27 In 2011, ninety-four percent by acre of soybeans in the [\*314] United States were genetically engineered, while seventy-three percent of all U.S. corn was genetically engineered to be insect resistant and sixty-five percent to be herbicide tolerant. n28 Another controversial current bioengineering technology is genetically engineered viruses, highlighted by the 2011 genetic engineering of the H5N1 virus to become highly contagious amongst ferrets. Many scientists argue that creating this genetically engineered virus was necessary to develop a remedy in case the H5N1 virus mutates naturally, but skeptics argue that the modified H5N1 virus is dangerous because of risks that the virus will escape or that malicious actors will engineer a similar virus. n29 Another example of recent advancements in bioengineering is a project spearheaded by biologist Craig Venter that transplanted a completely synthetic DNA sequence, or "genome," into an E. coli bacteria. Scientists then also added DNA "watermarks" such as the names of researchers and famous quotes. Craig Venter termed this "the first self-replicating species we've had on the planet whose parent is a computer." n30 Bioengineering has also become vastly cheaper and more accessible to the general public. For example, massive databases of DNA sequences are available online from the Department of Energy Joint Genome Institute ("JGI") and the National Center for Biological Information's GenBank(R) database. n31 To materialize these DNA sequences, individuals can order custom genomes online for a few thousand dollars, which are "printed" from a DNA synthesis machine and shipped to them, opening the door for amateur biologists to engage in genetic engineering. n32 DNA synthesis machines can print DNA strands long enough for certain types of viruses, which untrained [\*315] individuals can obtain within six weeks of purchase. n33 Even the synthesizing machines themselves can be purchased on the Internet on sites like eBay. n34 Much like bioengineering costs, the necessary expertise to engage in bioengineering is also plummeting. For example, since 2003, teams of entrepreneurs, college students, and even high school students submitted synthetic biology creations to the International Genetically Engineered Machine ("IGEM") competition, such as UC Berkeley's "BactoBlood" creation--a "cost-effective red blood cell substitute" developed by genetically engineering E. coli bacteria. n35 b. Forthcoming technology Perhaps the greatest forthcoming development in bioengineering is synthetic biology, which includes techniques to "construct new biological components, design those components and redesign existing biological systems." n36 This is in contrast to the traditional form of bioengineering that utilizes "recombinant DNA" techniques in which the DNA from one organism is stitched together with DNA from other organisms or synthetic DNA. n37 One method of synthetic biology involves "cataloguing" DNA sequences like "Lego bricks" and assembling them in unique ways (assembling natural molecules into an unnatural system, like combining the molecules from several types of bacteria to create new bacteria with novel properties). Another method of synthetic biology involves using DNA synthesizers to create life "entirely from scratch" n38 in what has been called the "the biological equivalent of word processors" n39 (using unnatural molecules to emulate a natural system, like creating the synthetic equivalent of a natural strand of influenza). n40 One way to generate synthetic DNA is to insert [\*316] the DNA into a "biological shell"--an organism, often a bacteria, that had its own genes removed--that can run the synthetic DNA like a computer runs software. n41 And while the technology to create eukaryotic cells (i.e., "a cell with a nucleus, such as those found in animals, including human beings") is a long ways away, synthetic viruses and bacteria are just around the comer. n42 c. Benefits of bioengineering Bioengineering is already demonstrating its potential to remedy major human health and environmental problems. For example, bioengineering is responsible for some important pharmaceuticals and vaccines, such as modern insulin and a vaccine for Hepatitis B, while "gene therapy" employs genetically engineered viruses to help treat cancer. n43 Environmental benefits resulting from the 15.4 million farmers who grew genetically modified crops in 2010 include increased yield of six to thirty percent per acre of land, pest-resistant crops that require fewer pesticides (resulting in 17.1 percent less pesticide use globally in 2010), lower water use for drought-resistant crops, decreased CO[2] emissions, and crops that do not require harmful tilling practices. n44 Forthcoming benefits to human health could be a new wave of ultra-effective drugs (e.g. antimalarial and antibiotic drugs), bioengineered agents that kill cancer cells, and the ability to rapidly create vaccines in response to epidemics. n45 Bioengineering could also serve as a beacon of human diagnostics by analyzing "thousands of molecules simultaneously from a single sample." n46 Meanwhile, forthcoming benefits to the environment could be organisms that remedy harmful pollution and superior forms of biofuel, for example. n47 Bioengineering could also spur an environmental revolution in which industries reuse modified waste from biomass feedstock and farmers grow [\*317] bioengineered crops on "marginally productive lands" (e.g. switchgrass). n48 d. Risks from bioengineering While bioengineering offers current and future benefits to humans and the environment, there are also significant yet uncertain risks that could devastate human life, societal stability, and the environment. n49 This paper focuses on three predominant GCR/ER risks arising from bioengineering: (1) the accidental release of harmful organisms (a "biosafety" issue), (2) the malicious release of harmful organisms ("bioterrorism"), and (3) the bioengineering of humans. The first two are current GCRs/ERs, while the third is a future GCR/ER. i. Risk of an accident The accidental release of a bioengineered microorganism during legitimate research poses a GCR/ER when such a microorganism has the potential to be highly deadly and has never been tested in an uncontrolled environment. n50 The threat of an accidental release of a harmful organism recently sparked an unprecedented scientific debate amongst policymakers, scientists, and the general public in reaction to the creation of an airborne strain of H5N1. n51 In September 2011, Ron Fouchier, a scientist from the Netherlands, announced that he had genetically engineered the H5N1 virus--his lab "mutated the hell out of H5N1," he professed--to become airborne, which was tested on ferrets; a laboratory at the University of Wisconsin-Madison similarly mutated the virus into a highly transmittable form. n52 The "natural" H5N1 killed approximately sixty percent of those with reported infections (although the large amount of unreported cases means that this is higher than the actual death rate), but the total number of fatalities--346 people--was relatively small because the virus is difficult to transmit from human to human. The larger risk comes from the possibility that a mutated virus would spread more easily amongst [\*318] humans, n53 which could result in a devastating flu pandemic amongst the worst in history, if not the very worst. n54 To put this in context, about one in every fifteen Americans--twenty million people--would die every year from a seasonal flu as virulent as a highly transmittable form of H5N1. n55 Lax regulations and a rapidly growing number of laboratories exacerbate the dangers posed by bioengineered organisms. While lab biosafety n56 guidelines in the United States and Europe recommended that projects like reengineering the H5N1 virus be conducted in a BSL-4 facility (the highest security level), neither laboratory that reengineered the H5N1 virus met this non-binding standard. n57 Meanwhile, a 2007 Government Accountability Office ("GAO") report indicated that BSL-3 and BSL-4 labs are rapidly expanding in the United States. While there is significant public information about laboratories that receive federal funding or are registered with the Centers for Disease Control and Prevention ("CDC") and the U.S. Department of Agriculture's ("USD") Select Agent Program, much less is known about the "location, activities, and ownership" of labs that are not federally funded and not registered with the CDC or the USD Select Agent Program. n58 The same report also concluded that no single U.S. agency is responsible for tracking and assessing the risks of labs engaging in bioengineering. n59 While some claim that critics are overreacting to the risk from this genetically engineered H5N1 virus, there have been a series of accidental releases of microbes from laboratories that demonstrate the risks of largely unregulated laboratory safety. In 1978, an employee died from an accidental smallpox release from a laboratory on the floor below her. n60 Many scientists believe that the global H1N1 ("swine flu") [\*319] outbreak in the late 2000s originated from an accidental release from a Chinese laboratory. n61 Reports concluded that the accidental releases of Severe Acute Respiratory Syndrome ("SARS") in Singapore, Taiwan, and China from BSL-3 and BSL-4 laboratories all resulted from a low standard of laboratory safety. n62 In the United States, a review by the Associated Press of more than one hundred laboratory accidents and lost shipments between 2003 and 2007 shows a pattern of poor oversight, reporting failures, and faulty procedures, specifically describing incidents at "44 labs in 24 states," including at high-security labs. n63 In 2007, an outbreak of Foot and Mouth Disease likely came from a laboratory that was the "only known location where the strain [was] held in the country" n64 because of a leaky pipe that had known problems. n65 This long history of faulty laboratory safety is why some experts, such as Rutgers University chemistry professor and bioweapons expert Richard H. Ebright, believe that the H5N1 virus will "inevitably escape, and within a decade," citing the hundreds of germs with potential use in bioweapons that have accidentally escaped from laboratories in the United States. n66 While the effects of such lapses in laboratory safety have not yet been felt aside from relatively small events such as the swine flu outbreak mentioned above, the increasing ability of less-sophisticated scientists to engineer more deadly organisms vastly increase the possibility that a lapse in biosafety will have detrimental effects. An accidental or purposeful release of a bioengineered organism has potentially grave consequences. For example, researchers in Australia recently accidentally developed a mousepox virus with a 100 percent [\*320] fatality rate when they had merely intended to sterilize the mice. n67 Scientists in the United States also created a "superbug" version of mousepox created to "evade vaccines," which they argue is important research to thwart terrorists, sparking a debate amongst scientists and policymakers about whether the benefits of such research is worth the associated risks. n68 If such a bioengineered organism escaped from a laboratory, the results would be unpredictable but potentially extremely deadly to humans and/or animals.

#### Ironically, SynBio’s upsides are important since the way to counter accidental releases is re-utilizing SynBio against itself.

Philp ‘14

et al; Jim C. Philp – formerly a Reader in Environmental and Industrial Biotechnology at Edinburgh Napier University. The report was drafted primarily by Jim Philp with significant contributions from Mineko Mohri. Mohri earned her law degree at Keio University in Tokyo. She has also served as a lecturer at Keio University. From: “Emerging Policy Issues in Synthetic Biology”, which was published June 4th, 2014. Available in full text via Google Books. p. 40

Synthetic biology principles are providing new opportunities for the design of attenuated pathogens for use as vaccines. Wimmer and Paul (2011) described the first synthesis of a virus (poliovirus) in 2002 accomplished outside living cells. They commented on the reaction of lay people and scientists to the work, which shaped the response to de novo syntheses of other viruses. In pioneering a safe live vaccine Coleman et al (2008) synthesised de novo large DNA molecules for the rational design of live attenuated poliovirus vaccine candidates. They postulated that this strategy could be used to attenuate many kinds of viruses. Similarly, the synthetic attenuated virus engineering approach was applied to influenza virus strain A/PR/8/34 for the rational design of live attenuated influenza virus vaccine candidates. Mueller et al. (2010) state that the approach can be applied rapidly to any emerging influenza virus in its entirety, an advantage that is especially relevant for seasonal epidemics and pandemic threats, such as H5N1 or the 2009 H1N1 influenza. During the latter pandemic, vaccines for the virus became available in large quantities only after human infections peaked. To accelerate vaccine availability for future pandemics, a synthetic approach that rapidly generates vaccine viruses from sequence data has been developed (Dormitzer et al.. 2013).

(Note: A/PR/8/34 - internally referenced – is a strain of influenza)

## Plan

#### The United States Federal Government should limit the state action immunity doctrine

### Adv Two

#### Adv Two is Practitioner Shortages:

#### Antitrust authority would check such shortages. The FTC does challenge State-Level “*Scope Of Practice*” restrictions on Nurse Practitioners. But they lose due to Parker immunity. An untouched market can’t solve - local elites use leverage to cement a physician-only squo.

McMichael ‘20

Internally quoting the Udalova and MEPS data sets. Benjamin McMichael – Faculty, University of Alabama School of Law. McMichael earned a BS in Mathematical Economics from Wake Forest University and a JD and PhD in law and economics from Vanderbilt University. Before joining the faculty at Alabama, Benjamin served as a law clerk to Judge Carolyn Dineen King on the United States Court of Appeals for the Fifth Circuit. Benjamin’s research is interdisciplinary, relying on empirical methods developed in the social sciences—particularly economics—to generate new insight into the ways in which the law influences the provision of healthcare - “Occupational Licensing and the Opioid Crisis” 54 U.C. Davis L. Rev. 887 - December, 2020 – some footnotes included for context and elaboration – but no text omitted other than the OG Table of Contents after the opening abstract - #E&F - https://lawreview.law.ucdavis.edu/issues/54/2/articles/files/54-2\_McMichael\_color.pdf

The United States’ affordable care crisis and chronic physician shortage have required nurse practitioners to assume increasingly important roles in the healthcare system. Nurse practitioners can address critical access-to-care problems, provide safe and effective care, and lower the cost of care. However, restrictive occupational licensing laws — specifically, scope-of-practice laws — have limited their ability to care for patients. Spurred by interest groups opposed to allowing nurse practitioners to practice independently, states require physician supervision of nurse practitioners. Research has discredited many of the traditional reasons for these restrictive laws, but emerging arguments assert that independent practice will deepen the ongoing opioid crisis by allowing unsupervised nurse practitioners to overprescribe opioids. The opioid crisis has become one of the defining public health emergency of this generation, so these arguments warrant serious investigation. If granting nurse practitioners independence will exacerbate the opioid epidemic, restricting their practices may be justified despite the clear benefits that independence could create for patients and the healthcare system.

This Article provides new empirical evidence on the role of nurse practitioner independence in opioid prescriptions by analyzing a dataset of approximately 1.5 billion individual opioid prescriptions. Containing information on approximately 90% of all prescriptions filled at outpatient pharmacies between 2011 and 2018, this dataset provides unprecedented insight into the ongoing opioid epidemic. An analysis of these data reveals that allowing nurse practitioners to practice independently reduces the quantity of opioids prescribed across all physicians and nurse practitioners. Thus, this Article demonstrates that, contrary to exacerbating the opioid crisis, granting nurse practitioners independence is a valid policy option for addressing this crisis. These results can inform the ongoing state and national debates over nurse practitioner scope-of-practice laws and the opioid epidemic more generally. And based on these results, the Article proposes several policy options at the state and federal levels that could both address restrictive scope-of-practice laws and ameliorate the ongoing opioid crisis.

INTRODUCTION

For many people, access to healthcare means the difference between life and death, the difference between constant pain and the ability to get out of bed in the morning, or the difference between an all-consuming mental illness and the ability to remain an active member of society. Even nearly a decade after the passage of the Affordable Care Act (“ACA”), however, access to healthcare continues to dominate local and national health policy debates, and the issue remains unresolved. The ACA certainly reinvigorated the country’s interest in access to care in unprecedented ways, and it drastically altered healthcare and healthcare provision in the United States. Unfortunately, it effected both of these changes with a near laser-like focus on increasing access to health insurance.1 For all of its virtues, this treatment of access to healthcare as effectively coextensive with access to health insurance has obscured a more fundamental problem with access to care as the following example from the New York Times illustrates.

A lifelong resident of rural Nebraska and registered nurse, Murlene Osburn saw a desperate need for mental health care in her community.2 To meet this need in an area where psychiatrists refused to practice, Osburn completed a master’s degree and a national certification process to become a psychiatric nurse practitioner (“NP”).3 Unfortunately, when she was ready to begin caring for patients, Osburn found herself stymied by the problem that spurred her to action in the first place: the lack of psychiatrists. Nebraska law prohibited NPs from practicing without physician supervision, and the nearest physician who could supervise her “was seven hours away by car and wanted to charge her $500 a month” for that supervision.4

This example illustrates the importance of access to healthcare providers in addition to access to health insurance. 5 And access to providers is far from given, with many areas of the country experiencing shortages of healthcare providers that experts expect to worsen over the next decade. 6 The New York Times example also highlights both a viable policy option to address these shortages - the increased use of NPs to provide care - and an important obstacle to implementing this policy - restrictive laws.

NPs are registered nurses who have undergone additional training to provide healthcare services historically provided by physicians. 7 They represent the principal source of care in many geographic areas 8 and are more likely than physicians to practice in rural and underserved communities. 9 This makes the 200,600 practicing NPs a natural option to address chronic, critical, and worsening physician shortages across the country. 10 While NPs provide healthcare services across the country, their ability to do so is not equal in all areas. State scope-of-practice ("SOP") laws - a subset of the occupational licensing laws that govern NPs and many other professionals - determine what services [\*891] NPs may provide and the conditions under which they may provide those services.

States often justify SOP laws as necessary to ensure patient safety by preventing unqualified individuals from providing care. 11 Though these laws can further this goal, excessively restrictive SOP laws undermine the ability of NPs to care for patients. Prior work has shown that eliminating restrictive SOP laws and allowing NPs to practice independently of physicians can facilitate access to care, 12 improve the quality of care, 13 reduce the use of intensive medical procedures, 14 and reduce the price of some healthcare services. 15 Based on this evidence, the Obama and Trump administrations along with the National Academy of Medicine and other organizations have urged states to relax their SOP laws. 16 A minority of states have responded by granting NPs the authority to practice independently, but the ongoing debate and [\*892] political battle over SOP laws has only intensified over the last decade. 17 Physician organizations, in particular, vigorously oppose the relaxation of these laws and have been successful in discouraging states from granting NPs independence. 18

9 See Peter I. Buerhaus, Catherine M. DesRoches, Robert Dittus & Karen Donelan, Practice Characteristics of Primary Care Nurse Practitioners and Physicians, 63 NURSING OUTLOOK 144, 144-50 (2015) [hereinafter Practice Characteristics] (finding that NPs are more likely to care for Medicaid patients, vulnerable populations, and rural populations); Grant R. Martsolf, Hilary Barnes, Michael R. Richards, Kristin N. Ray, Heather M. Brom & Matthew D. McHugh, Employment of Advanced Practice Clinicians in Physician Practices, 178 JAMA INTERNAL MED. 988, 988-89 (2018) (finding that NPs are likely to be employed in primary care).

10 Occupational Employment and Wages, May 2019, 29-1171 Nurse Practitioners, U.S. BUREAU LAB STAT., https://www.bls.gov/oes/current/oes291171.htm (last visited Nov. 11, 2020) [https://perma.cc/5A4C-9H7S].

11 See Morris M. Kleiner, Enhancing Quality or Restricting Competition: The Case of Licensing Public School Teachers, 5 U. ST. THOMAS J.L. & PUB. POL’Y 1, 3, 8 (2011) (“The general rationale for licensing is the health and safety of consumers. Beyond that, the quality of service delivery . . . [is] sometimes invoked.”).

12 Benjamin J. McMichael, Beyond Physicians: The Effect of Licensing and Liability Laws on the Supply of Nurse Practitioners and Physician Assistants, 15 J. EMPIRICAL L. STUD. 732, 764-65 (2018) [hereinafter Beyond Physicians]; Jeffrey Traczynski & Victoria Udalova, Nurse Practitioner Independence, Health Care Utilization, and Health Outcomes, 58 J. HEALTH ECON. 90, 103-04 (2018); see also John A. Graves, Pranita Mishra, Robert S. Dittus, Ravi Parikh, Jennifer Perloff & Peter I. Buerhaus, Role of Geography and Nurse Practitioner Scope-of-Practice in Efforts to Expand Primary Care System Capacity, 54 MED. CARE 81, 83-88 (2016).

13 Traczynski & Udalova, supra note 12, at 97

14 See, e.g., Sara Markowitz, E. Kathleen Adams, Mary Jane Lewitt & Anne L. Dunlop, Competitive Effects of Scope of Practice Restrictions: Public Health or Public Harm?, 55 J. HEALTH ECON. 201, 209-16 (2017) (showing a reduced probability of intensive procedures related to pregnancies in states that allow nurse practitioners to practice with no barriers).

When opposing NP independence, physician groups often argue that requiring physician supervision promotes patient safety and the delivery of high-quality care. 19 Although existing clinical evidence undermines these claims, 20 physician groups have recently emphasized the troubling possibility that allowing NPs to practice independently will increase opioid prescriptions. 21 The reasoning offered is straightforward: If NPs can prescribe opioids without physician supervision, then they will inappropriately overprescribe opioids and deepen the ongoing opioid crisis. 22 This Article engages with the debate [\*893] over NP SOP laws by empirically analyzing the impact these laws have on opioid prescriptions. Given the severity of the ongoing opioid crisis, the claim that allowing NP independence will deepen that crisis by increasing opioid prescriptions warrants careful consideration. On one hand, allowing NPs to practice independently can address critical access-to-care issues and improve the healthcare system in other important ways. On the other hand, restricting the practices of NPs may be justified despite these benefits if doing so avoids exacerbating the opioid crisis. This Article provides critical new evidence on the effect that NP SOP laws have on opioid prescriptions. Specifically, I analyze a dataset of approximately 1.5 billion individual opioid prescriptions, which represent approximately 90% of all opioid prescriptions filled at outpatient pharmacies between 2011 and 2018. This dataset provides unprecedented insight into the ongoing opioid epidemic and the role of healthcare providers in that epidemic. Because this dataset covers nearly the universe of opioid prescriptions in the United States over eight years and is organized at the individual-prescription level, I am able to develop more complete and more granular evidence on the role of NP SOP laws in opioid prescriptions than has previously been possible. The analysis reveals that allowing NPs to practice independently reduces the quantity of opioids prescribed across all physicians and NPs by approximately 4.4%. 23 In contrast to physician groups' claims, the evidence developed here suggests that relaxing NP SOP laws reduces opioid prescriptions. Thus, this Article demonstrates that, rather than exacerbating the opioid crisis, granting NPs independence is a valid policy option for addressing that crisis. These results can inform the ongoing debates over both NP SOP laws and the opioid epidemic more generally, and this Article uses this evidence to recontextualize the debate over SOP laws and offer specific policy recommendations. In addition to joining various scholars and [\*894] organizations in urging states to reform their SOP laws, this Article engages with potential federal policy options that can both address the dire healthcare provider shortages across the country while ameliorating the opioid crisis. Federal options, such as the ones discussed below, will become increasingly relevant as state legislation has proven difficult to obtain in certain states. 24 This Article proceeds in four parts. Part I details the contributions that NPs make to the healthcare system and the ways SOP laws impact their ability to do so. 25 Part II provides context for the empirical analysis that is the focus of the Article by detailing the progression of the opioid crisis. 26 Part III discusses the empirical methodology and reports the results of the empirical analysis. 27 Part IV engages with the policy implications stemming from the results of that analysis, 28 and a brief conclusion follows.

I. REGULATING HEALTHCARE PROVIDERS

Historically, physicians have delivered most of the healthcare in the United States. While other providers, such as registered nurses, have always played important roles in healthcare, physicians have been responsible for directing most care delivery. Physician dominance, however, has begun to recede as NPs and other types of healthcare providers are providing "[a] growing share of health care services." 29 And this trend will likely continue because the growth rate of NPs outstrips that of physicians, 30 which only adds urgency to resolving the debate over NP SOP laws. To provide context to that debate, this Part [\*895] begins by discussing the role of NPs in the healthcare system before outlining the contours of the debate over the SOP laws that regulate NPs.

A. Nurse Practitioners and the Laws that Govern Them

To qualify as an NP, an individual must first become a registered nurse, which often involves completing a bachelor's degree in nursing. 31 Most registered nurses practice for several years before returning to complete a master's or doctoral degree to become an NP. 32 Their training involves clinical and didactic courses that prepare future NPs to diagnose and treat patients, order and interpret tests, and prescribe medication. 33 Following their training, NPs practice in a wide variety of medical settings, but over 60% choose to provide some form of primary care. 34 With this training, NPs provide care alongside physicians across the country, 35 but where they choose to practice and which patients they choose to care for often differs substantially from the choices made by physicians. Relative to physicians, NPs more often choose to practice in primary care and to care for underserved populations, including Medicaid patients. 36 They also provide care in rural or underserved areas to a [\*896] greater extent than physicians. 37 The predilection of NPs to practice in isolated areas and care for patients who have difficulty accessing care is particularly important in an era of worsening physician shortages. For example, the Association of American Medical Colleges estimates that, by 2032, the United States will face a physician shortage of between 46,900 and 121,900. 38 Such a shortage has implications for the country generally, but it will impact rural areas to a greater degree. Recent estimates suggest that the number of physicians practicing in these areas could decline by 23% by 2030. 39 With approximately 200,600 NPs delivering care in 2019 40 NPs can alleviate physician shortages in rural and other areas. Indeed, NPs outnumber primary care physicians, 41 practice in convenient locations like retail and urgent care clinics, 42 and represent the principal source of healthcare in many parts of the country. 43 However, the ability of NPs to function as the principal source of healthcare depends heavily on the SOP laws in place. Prior work has [\*897] classified NP SOP laws in slightly different ways. 44 Each classification system has advantages and disadvantages, but I adopt a classification scheme based on two recent studies that that focus on specific statutory and regulatory language. 45 Where necessary, I updated the classifications based on more recent statutory and regulatory information. This approach to classification eliminates the risk of mis-classification that can occur by relying on inconsistent secondary sources. It also isolates the specific statutes and regulations that policymakers may change to achieve specific results in their healthcare systems. 46 Using these statutes and regulations, I classify each state in each year as either allowing NPs to practice independently or restricting the practices of NPs. To be classified as allowing "independent practice," a state must (1) have no requirement that physicians supervise NPs and (2) grant NPs full prescriptive authority, i.e., allow NPs to prescribe the same range of medications as physicians. 47 States that either require physician supervision of NPs or restrict their prescriptive authority fall into the "restricted practice" category. [\*898] Figure 1 provides an overview of NP SOP laws during the time period analyzed here. In 2011, fourteen states allowed NPs to practice independently, and thirty-seven states restricted the practices of NPs. 48 Of the thirty-seven states restricting NP practice, fourteen changed their laws prior to the end of 2018 to allow NPs to practice independently. 49 Figure 1 separately highlights each of the states that always allowed NPs to practice independently, always restricted NP practice, and changed from restricted to independent practice. As Figure 1 illustrates, the trend among states decidedly favors NP independence, with half of all states that currently allow independent practice adopting a law to that effect in the last decade. This trend has not emerged without opposition, however, and the debate between opponents of relaxing NP SOP laws and advocates of greater NP autonomy has become quite heated. The next subpart engages with this [\*899] ongoing debating, tracing the contours of each side's arguments and the evidence that supports their arguments.

B. The Scope-of-Practice Debate

As NPs have assumed greater roles in the delivery of care, some groups have objected to liberalizing the SOP laws that govern NPs to allow them to provide more services and practice with greater autonomy. Principal among the opponents of relaxing NP SOP laws are physician groups, with the American Medical Association ("AMA") offering some of the strongest resistance to granting NPs greater independence. 50 Advocates of greater NP autonomy include nursing groups, policy think tanks of various political orientations, the National Academy of Medicine, and the Obama and Trump administrations. 51 Opponents of greater NP autonomy often emphasize the greater education completed by physicians and argue that NPs cannot provide safe or high-quality care without physician supervision. 52 Proponents often respond that NPs deliver care of similar quality as physicians and that allowing greater NP autonomy lowers the cost of care and improves access to care. 53 This Part engages with each of these sets of arguments in turn.

1. Independent Nurse Practitioners and the Quality of Care

Perhaps the most contentious point in the debate over NP SOP laws concerns the ability of NPs to deliver high-quality care without physician oversight. Opponents of NP independence generally argue that, without physician supervision, NPs cannot safely care for patients. For example, the California Medical Association has stated that it "opposes any attempts to remove physician oversight over [NPs] and believes that doing so would put the health and safety of patients at risk." 54 Some groups frame their arguments about quality of care in [\*900] terms of the different levels of education completed by NPs and physicians. 55 These arguments require the additional inferential step that more education is required to provide the type of care delivered by NPs, but they are effectively equivalent to statements that unsupervised NPs cannot safely care for patients. 56 Advocates of greater NP autonomy respond to these arguments by pointing to the available evidence that demonstrates NPs generally deliver care of comparable quality to that delivered by physicians. 57 Multiple studies have investigated the ability of NPs to deliver high-quality care, often comparing NP-supplied care to physician-supplied care. 58 A recent comprehensive analysis compared the quality of care delivered to Medicare beneficiaries by NPs and physicians and found that physicians perform better on certain quality measures and NPs perform better on other measures. 59 Related work has found no meaningful differences between NPs and physicians in caring for HIV [\*901] patients, 60 managing diabetes, 61 providing primary care, 62 prescribing medications, 63 or providing critical care. 64 Reviewing the evidence, the National Academy of Medicine concluded "that access to quality care can be greatly expanded by increasing the use of ... [NPs] in primary, chronic, and transitional care." 65 Opponents of broader NP SOP laws have criticized this evidence as irrelevant because these studies are often "performed in a setting of physician oversight and collaboration." 66 They argue that "using data from studies of nurse practitioners working under physician supervision to demand independent practice is a flawed practice, as there is no proof that nurse practitioner care without physician oversight is either safe or effective." 67 However, studies that have explicitly examined the role of relaxing NP SOP laws - as opposed to the role of NPs generally - in promoting the delivery of high-quality care have concluded that NP independence either improves or has little effect on the quality of care delivered. A 2017 study found that NP "independence had no statistically significant effect on any of the three [clinically verified indicators of [\*902] healthcare quality] studied." 68 In contrast to claims that NP SOP laws are necessary for the protection of patients, 69 this study "did not substantiate the use of [SOP] restrictions for the sole purpose of consumer protection." 70 A separate study "cast[] further doubt on the theory that state regulations limiting NPs practice are associated with quality of care." 71 Examining patient-reported quality across many years of a nationally representative dataset, a recent study found that NP independence increases the probability that patients report being in excellent health. 72 Another study found that NP independence had no effect on infant mortality rates, an important indicator of healthcare quality. 73 Overall, existing evidence does not support the contention that unsupervised NPs provide unsafe or low-quality care. To be sure, physician groups are correct in their assertion that NPs are not trained to provide the same range of services as physicians - NPs do not perform surgery, for example. Within the scope of their training, however, the evidence demonstrates that NPs perform similarly to physicians.

72 Traczynski & Udalova, supra note 12, at 98, 99 tbl.7.

2. Scope-of-Practice Laws and the Cost of Healthcare

Though healthcare quality tends to receive the most attention from experts within the SOP law debate, concerns over the cost of care predominate among the patients who are most affected. Indeed, the health policy conversation over the last two decades has focused heavily [\*903] on the ability of patients to obtain affordable care. 74 Advocates of greater NP autonomy have argued that removing restrictive SOP laws will facilitate the use of lower cost providers and ultimately reduce costs within that system. For example, Kathleen Adams and Sara Markowitz have explained that "achieving productivity gains is one way to reduce cost pressures throughout the health-care system" and that such gains can be realized "by using lower-cost sources of labor to achieve the same or better outcomes." 75 The "high payment rates for physicians in the United States" makes the increased use of NPs a particularly appealing strategy for cost-reduction. 76 Recent research has demonstrated that abrogating restrictive SOP laws can reduce costs within the healthcare system to the benefit of patients and the public. A study by Morris Kleiner and others found that granting NPs independence reduces the price of a common medical examination by between 3% and 16%. 77 A separate economic evaluation estimated that liberalizing SOP laws would save approximately $ 543 million annually in emergency department visits alone. 78 Though specific to certified nurse midwives instead of NPs, a recent study found that eliminating restrictive SOP laws for nurse midwives would save $ 101 million by reducing reliance on more intensive forms of care during birth. 79 Other studies have found that payments in connection with Medicare beneficiaries cared for by NPs were between 11% and 29% lower than those cared for by physicians, 80 the savings achieved by using retail health clinics in lieu of emergency departments are higher when NPs have more independence, 81 and Medicaid costs either decrease or remain flat when NPs are granted more autonomy. 82 On the other side of the debate, opponents of NP independence can point to some evidence that NPs and SOP laws allowing them to practice independently may increase healthcare costs. In a recent report, the [\*904] Medicare Payment Advisory Commission ("MedPAC") highlighted several studies finding that NPs tend to increase costs. 83 One study found that NPs utilized more healthcare resources in caring for patients than physicians, suggesting that more extensive use of NPs may increase costs. 84 A separate study found that NPs order more medical imaging services than physicians in primary care settings. 85 Medical imaging, such as magnetic resonance imaging ("MRI") and computed tomography ("CT") scans can be expensive, so this study suggests that NP independence may increase costs over time. More recent work that examines a larger population contradicts these results, however. Examining data on Medicare and commercial insurance claims, a 2017 study found that NP independence does not result in more medical imaging and does not increase healthcare costs. 86 Similarly, research conducted by economists at the Federal Trade Commission ("FTC") revealed no evidence that relaxing NP SOP laws increases healthcare costs or prices. 87 Overall, a growing body of research suggests that allowing NPs to practice independently can reduce costs and the prices patients must pay for care, while only a few studies have found evidence to the contrary. 88

3. Nurse Practitioners and Access to Healthcare

Turning to the debate over the role of SOP laws in access to healthcare, the evidence more heavily favors advocates of greater NP autonomy than it does in either the cost or quality debates. Advocates of greater NP autonomy have argued that "by unnecessarily limiting the tasks that qualified [NPs] can perform, SOP restrictions exacerbate [healthcare provider] shortages and limit access to care." 89 An Obama administration report noted that "easing scope of practice laws for APRNs represents a viable means of increasing access to certain primary care services," 90 and the evidence generally supports this conclusion. For example, one study concluded that states with less restrictive SOP laws "overall had more geographically accessible" NPs. 91 Similarly, a 2018 study found that relaxing SOP laws increases access to healthcare generally but has the largest positive effect in counties that have the least access to healthcare. 92 This evidence suggests that "restrictive licensing laws limit the growth in the supply of [NPs] who could deliver care in communities with relatively few practicing physicians." 93 Extending this evidence to more specific measures of healthcare access, a third study concluded that granting NPs more autonomy increases the likelihood that individuals receive a routine check-up, have access to a usual source of care, and can obtain an appointment with a provider. 94 NP independence also reduces the use of emergency departments for conditions that can be addressed in less intensive (and less expensive) settings, as patients can more easily access a healthcare provider when NPs can practice independently. 95 [\*906] The response to the argument that allowing NPs greater autonomy increases access to healthcare by opponents of NP independence often does not focus explicitly on healthcare access. While not every study has found that relaxing SOP laws increases access to healthcare providers, 96 the existing evidence generally supports this conclusion. 97 Opponents, therefore, typically offer only indirect arguments on the access issue. In opposing a bill that would relaxing California's SOP laws, the president of the California Medical Association offered an example of a common argument: "We must ensure that every American, regardless of age or economic status, has access to a trained physician who can provide the highest level of care. Expanding access to care should not come at the expense of patient safety and we will not support unequal standards of care... ." 98 In other words, expanding access to NP-supplied care does not amount to expanding access to care generally because NPs provide inferior care. Though framed as an access-to-care argument, this contention is more accurately characterized as an argument about the quality of care provided by NPs, which as addressed above, appears to be equal in basic practice areas.

4. The State of the Scope-of-Practice Debate

The debate over NP SOP laws is not new, and multiple national organizations - both governmental and non-governmental - have weighed in on this debate after conducting extensive reviews of the available evidence. Perhaps the most relevant organization to opine on SOP laws to date has been the National Academy of Medicine (formerly, the Institute of Medicine). The Academy criticized restrictive SOP laws, noting that "what nurse practitioners are able to do once they graduate varies widely for reasons that are related not to their ability, education or training, or safety concerns, but to the political decisions of the state in which they work." 99 Calling for an end to restrictive SOP laws, the Academy clearly stated that NPs "should practice to the full extent of their education and training." 100

[\*907] Researchers at the FTC reached a similar conclusion, albeit for somewhat different reasons. The FTC has no authority to enforce federal antitrust laws against states that restrict the practices of NPs with SOP laws because these laws fit squarely within the state-action immunity articulated in Parker v. Brown. 101 However, FTC researchers applied the economic principles that underlie those antitrust laws and concluded that restrictive SOP laws "deny[] health care consumers the benefits of greater competition." 102 They further concluded that the harms to healthcare services markets - higher prices and decreased access to care - associated with restrictive SOP laws were not offset by any attendant benefits. 103 Consistent with these conclusions, the FTC has regularly opposed state laws that restrict the practices of NPs and supported the passage of bills that relax the SOP laws. 104

#### Scope of Practice – or “S.O.P.” – restrictions *block access* and *hamper options for patient health*.

LDI ‘20

Internally quoting Dr. Margo Brooks Carthon - LDI Senior Fellow, a Nurse Practitioner, PhD, RN, FAAN, and is also an Associate Professor at Penn’s School of Nursing. The LDI is the Leonard Davis Institute of Health Economics at the University of Pennsylvania (Penn). Six expert panelists are quoted and we are quoting the section from Margo Brooks Carthon – “Scope of Practice Restrictions and Vulnerable Populations: LDI Virtual Conference Explores The Issue's Changing Dynamics” - November 21, 2020 - #E&F - https://ldi.upenn.edu/our-work/research-updates/scope-of-practice-restrictions-and-vulnerable-populations/

The most heavily publicized debates around the SOP issue over the last 60 years have been about nurse practitioners whose work is often focused on underserved communities that lack the most basic kinds of medical care. Panelist and LDI Senior Fellow Margo Brooks Carthon, PhD, RN, FAAN, is an NP and health services researcher in that field. She is also an Associate Professor at Penn’s School of Nursing, and a core faculty member at the Penn Center for Health Outcomes Policy Research.

“There are over two hundred thousand NPs in the United States working under varying degrees of scope of practice restrictions, depending on the states where they’re employed,” Carthon said. “These barriers have implications for population health as well as health equity.”

“Twenty-two states and the District of Columbia fully license NPs to practice independently. Others require career-long collaborative agreements with a supervising physician. Some require a physician to review a percentage of NP charts — ten percent every year in Alabama and Georgia; twenty percent every 30 days in Tennessee. NPs are often limited in the distance they can be from a physician and are required to jump through other hoops just to provide basic care.”

#### Solvency is *empirical* and the *impact is significant*. Some States have relaxed SOP restrictions to differing degrees. Studies confirm this has saved many lives *per day* *per State*.

Chung ‘20

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Nurse practitioners (NP) are well-trained health care personnel for primary, acute, and specialty care in the US. However, 32 states have restrictions on their scope of practice and Illinois is one of them.

In response to the shortage of health care workers during the coronavirus pandemic, twenty-one states granted NP full practice authority to cope with the increasing demand for health care services. In the Midwest, Kansas, Indiana, Michigan, Missouri, and Wisconsin, adopted a more expansive scope of service for NP.

This report evaluates the effect of this policy change on the rate of COVID-related deaths in the Midwest states, which expanded NP authority and sheds light on healthcare policy in Illinois.

Findings:

NP in Illinois have full practice authority only if they have had 4,000 hours of clinical experience and completed 250 training hours.

Illinois and Ohio are the only two Midwest states, which did not expand the scope of practice for NP during the pandemic.

In the states that did expand the scope of practice for NP, COVID related deaths were potentially reduced by 10 cases per day

If Illinois had expanded the scope of practice, 8% fewer COVID-19 deaths would have occurred in Cook County, which is the most affected area in the state.

The findings reveal that granting NP full practice authority is effective in easing the shortage of health care workers and improves health care quality. Our result echoes the findings by other healthcare researchers that granting NP independent practice authority improves patient outcomes. This report recommends that health care regulators in Illinois grant all NP independent practice authority in order to meet the states’ growing health care demand.

Introduction

The shortage of healthcare professional in the US has been a notable concern among health policy makers. According to the Bureau of Health Workforce, in 2017 only 55 percent of the need for primary care professional was met.1 For Illinois, the Bureau estimated that 468 extra primary care health providers were needed to address the shortage problem, which is roughly 188% of the existing number of primary care providers in the state. The shortage problem is the biggest in the Midwest.

The nationwide healthcare labor force shortage manifests itself even more during the COVID-19 pandemic. To address the health workforce shortage, a number of states temporarily expanded the scope of practice for nurse practitioners (NP). NP are well-trained health care personnel, typically requiring post-graduate training. According to the American Association of Nurse Practitioners (AANP), NP with full autonomy are authorized to \evaluate patients; diagnose, order and interpret diagnostic tests; and initiate and manage treatments".2 Although they are well-prepared to provide primary, acute, and specialty care, their scope of practice varies by state. According to the classification by AANP, in a state with "restricted/reduced practice," NP need to have a collaborative agreement with, or work under direct supervision of a licensed health professional (e.g. physician, dentist). The limited authority of NP has not only reduced health access in rural areas, but also significantly increased the administrative burden of the supervising personnel. It has also reduced the amount of time dedicated for patient care (Traczynski and Udalova, 2018). Healthcare researchers have claimed that granting NP independent practice authority would have a positive impact on patient outcomes.

This report estimates the impact of expanding the scope of practice for NPs on COVID mortality in the Midwest. In the region, seven states were classified prior to the pandemic as "restricted/reduced NP practice" by the AANP. Among those, Kansas, together with Indiana, Michigan, Missouri, and Wisconsin granted NPs independence, whereas Illinois and Ohio did not implement changes.3 In the empirical exercise, we leverage on this quasi-experimental setting to compare daily COVID mortality in the treated states with that in Illinois and Ohio before and after the emergency response. Although the discussion evaluates the recent emergency response under the pandemic, the finding here contributes to the ongoing debate of whether NP should be granted independent authority.

According to our estimates, expanding the scope of practice for NPs potentially reduced COVID-related deaths by ten per day. To put this figure into context, the number amounts to a reduction of 8% of in those states that implemented the changes the average death toll in Cook County during the sample period. These results add support to granting NP full independent authority to ease the healthcare workforce shortage.

Restriction on NP and State Emergency Response

The scope of practice for nurse practitioners varies by state. According to the American Association of Nurse Practitioners (AANP), five of the Midwest states allow full practice (light blue in Figure 1a), meaning that NP can work independently and are authorized for patient diagnosis and prescription.

Illinois with four other Midwest states (Figure 1a) classify NP under "reduced practice" restrictions. Illinois regulations amended in 2017 do allow a subset of NP full practice authority, but the change only applies to NP who have had at least 4,000 hours of clinical experience and completed 250 training hours.4 In contrast, North Dakota, South Dakota, Nebraska, Minnesota and Iowa permit a full scope of practice for all NP without a minimum threshold of accrued work hours.

In Illinois, NP are required to have a collaborative agreement with a health professional (e.g. licensed physician), listing the types of care, treatment and procedures the NP is allowed to perform. NP in Illinois and five other Midwest states can work quasi-independently because physicians are not required to be physically present with the NP. Prior to the pandemic outbreak, Missouri and Michigan had the most restrictive rules, requiring that NP work under direct supervision of a physician (Figure 1a).

As the pandemic unfolded, states with reduced or restricted practice authority began to expand the scope of practice for NP. The aim of the change was to enlarge the healthcare workforce capable of providing COVID-19 care.

Among the Midwest states shown in Figure 1b, Missouri and Indiana were the first to waive part of the supervision requirements. At the date of this report, Illinois and Ohio were the only two states, which have not taken action to expand the scope of practice for NP.

Policy Effect on COVID-related Mortality

To evaluate the effectiveness of expanded scope of practice, this report looks into the impact on COVID-related mortality. Data on county level daily mortality are retrieved from the New York Times.5

To estimate a cause-and-effect relationship between expanded scope of practice and COVID-19 mortality, this report employs the synthetic control method (Abadie and Gardeazabal, 2003; Abadie, Diamond, and Hainmueller, 2010). The essence of this statistical technique is to construct a counterfactual which mirrors the post-policy mortality that would have been observed had the policy not happened. We then obtain the daily policy effect by directly comparing the counterfactual mortality with the observed mortality. To ensure the counter-factual offers a valid comparison, we make use of several important indicators that would predict COVID-related deaths. These include the pre-policy number of COVID death, pre-policy number of confirmed cases (also retrieved from the New York Times database), and county characteristics (number of NPs, population size, percent of 65+ population, percent of black, number of hospital, and number of beds) obtained from the Area Health Resource Files (AHRF, 2020).

An important property of the synthetic control technique is that the pre-policy number of COVID death has to be informative enough to produce reliable post-policy predictions. In other words, we rely on the pre-policy trend to predict the post-policy movement. This limits the start of the sample period to late March because many counties did not record any COVID deaths until then. For this reason, we are not able to produce a dependable counterfactual for the counties in Missouri and Indiana because they granted authority to NP prior to reporting any COVID-19 deaths.

Figure 2, shows the estimation result for Kansas, Wisconsin, and Michigan. The solid line of each graph represents the actual daily mortality of a state (average of all counties), whereas the dotted line shows the predicted counterfactual using the synthetic control technique. The red vertical line in the middle of each graph represents the day before the policy takes place. For example, in the top-left corner, the solid line shows that Kansas counties recorded an increasing number of COVID-related death with a modest decline in magnitude since April 22, which is the date Kansas started to authorize temporary independent practice for NPs. The trend afterward clearly diverges from the predicted no-policy counterfactual, which implies that the policy slowed down the death toll. Until the end of the sample period, the maximum impact by the policy reduces the daily death toll by 10 cases. We also observe a similar pattern in Wisconsin and Michigan, though the magnitude of death reduction in Michigan is smaller.

There is however the possibility that the reduction in deaths was caused by some other concurrent policies and any reduction in fatalities would then be falsely attributed to the expanded scope of practice. This concern is particularly valid because there were many policies adopted in response to the nationwide health risk.

Therefore, to check the robustness of our prediction of reduced deaths associated with NP scope of authority, we tested to see if the social distancing policy, a major attempt by states in response to the pandemic, had the same associated improvement on the cases of COVID-19 deaths.

For Kansas, Wisconsin, and Michigan, social distancing measures were implemented in late March. We therefore implemented the same estimation procedures using the synthetic control method but moving the treatment date in each state to correspond to the start of the state's shelter-in-place order. As shown in Figure 3, in each of the three states, the actual cases of death continues to grow at a higher rate than the predicted counterfactual. This finding suggests that the lock down policies did not produce the same reduction in the number of COVID-related fatalities as the expanded scope of practice

Conclusion and Policy Implication

Amid the unprecedented health crisis, it is important that state regulators consider the cost of occupational regulations.

The argument for occupational licensing is that it protects the consumer. In the case of NPs scope of practice, regulators often worry about the quality of service if the scope is widened. This report however suggests there is empirical evidence that granting NPs independent authority has contributed to a reduction in COVID-19 deaths.

#### The Aff can solve.

#### Malleability holds in contingent instances - Health access is distinct from other modes of violent power. Claiming it as “liberalism” creates false equivalencies. Such State-Alarmism is wrong and generates support for ACA rollback.

Schotten ’15

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III. Moralism and Totalitarianism

Foucault’s methodological and political commitments are all the more significant in light of Agamben’s demanded corrective of Foucaultian biopolitics and understanding of sovereignty. For even as Foucault expands his methodological rejection of the state as ahistorical political principle or sociological object, Agamben effects not simply a return to sovereignty, as already argued, but a return to sovereignty in what, following Foucault, we must recognize as totalitarian forms. This is the case not only methodologically, as will become clear, but also morally, an aspect of political critique that does not even enter into the Foucaultian schema. Methodologically, Agamben’s persistent focus on Auschwitz as the West’s political paradigm and Nazism as the teleological culmination of sovereignty’s political trajectory results in his offering an “anti-totalitarian” theory of sovereignty that renders any other historical or political outcome besides totalitarianism impossible. Hence Agamben’s dispute with Foucault is actually a “corrective” of Foucault, a disappointingly moralizing rebuke rather than a constructive scholarly engagement.

In BB, Foucault says his choice to talk about governmentality rather than the state is purposeful, a methodological choice that is “obviously and explicitly a way of not taking as a primary, original, and already given object, notions such as the sovereign, sovereignty, the people, subjects, the *state, and civil society*, that is to say, all those universals employed by sociological analysis, historical analysis, and political philosophy.”92 Rather, Foucault says, he would like to do “exactly the opposite” and, instead of using “state and society, sovereign and subjects, etcetera” as points of departure, he wants to show how they “were actually able to be formed” so that their status can be called into question.93 At one level, this is simply Foucault’s methodological preference. At another level, as we have seen, it is a political commitment, insofar as refusing to begin with these sociological givens facilitates resistance to the power-effects of what he calls “totalitarian theories.” While, in “SMBD,” these totalitarian theories were Marxism and psychoanalysis, in BB the target is now what Foucault calls “historicism,” which he describes as a practice of taking universals and running them through the mill of history in order to deduce their “meaning.” Significantly, historicism, like Marxism and psychoanalysis, unfolds a similarly reductive and deductive logic that “starts from the universal and, as it were, puts it through the grinder of history.”94 Instead, Foucault suggests the supposition “that universals do not exist. And then I put the question to history and historians: How can you write a history if you do not accept a priori the existence of things like the state, society, the sovereign, and subjects?”95 Insofar as historicism in BB functions the way Marxism and psychoanalysis do in “SMBD,” then historicism can also be considered a totalitarian theory that Foucault seeks to critique. In seeking to undertake an analysis that is “exactly the opposite of historicism,”96 Foucault is in some sense continuing his practice of thwarting or undermining totalitarian theories, a methodology that is animated by a specifically political commitment to insurrection.97

Foucault is also cautious about indulging the fearful discourse of the all-powerful state. He names this anxiety “state ~~phobia~~” 98 (“state alarmism”) and says it has two related versions: first,

the idea that the state possesses in itself and through its own dynamism a sort of power of expansion, an endogenous imperialism constantly pushing it to spread its surface and increase in extent, depth, and subtlety to the point that it will come to take over entirely that which is at the same time its other, its outside, its target, and its object, namely: civil society.99

If this leaves the impression of a kind of suffocating beast whose tentacled grasp is ever extending over and sliding in between any cracks of resistance to its domination, this is no accident: Foucault refers to this as the “cold monster” version of the state, the “threatening organism above civil society.”100 Foucault does not spend much time unpacking the problems with this theory, presumably because they are self-evident on the basis of his earlier work: not only is the state here presupposed as a causal entity that exists “above” its subjects, but it is also possessed of a kind of vitalism or life principle that Foucault dismisses out of hand as an inadequate or irresponsible account of power. The state as “cold monster” is, quite literally, yet another version of the Leviathan, the great sea monster from the book of Job, for whose beheading Foucault has already vigorously advocated.

The second bit of “critical commonplace”101 regarding the state that Foucault seeks to avoid is the notion that there are no significant differences between or among different forms of it. This is the notion that, as Foucault puts it,

there is a kinship, a sort of genetic continuity or evolutionary implication between different forms of the state, with the administrative state, the welfare state, the bureaucratic state, the fascist state, and the totalitarian state all being, in no matter which of the various analyses, the successive branches of one and the same great tree of state control in its continuous and unified expansion.102

Here Foucault explicitly puts totalitarianism and the state together in order to distinguish “the totalitarian state” as a *distinct*ive state form, rather than the paradigm case of the state itself.

Indeed, here we might understand Foucault as attempting to disentangle a kind of doubling of totalitarianism in state phobia, wherein the cold monster view anoints the state with the kind of omniscience and omnipotence often ascribed to totalitarian versions of it. This specifically totalitarian version ultimately becomes synonymous with the state itself.

What links the “cold monster” view and the “genetic continuity” view is their consideration of the state as a malevolent principle in itself, such that distinctions among types become irrelevant and *any state action* can be interpreted as a sign of its increasing repressiveness and violence. Foucault uses the example of an unduly harsh criminal sentence, which he says can be interpreted as evidence of the increasing fascism of the state, regardless of whatever may actually be true—this is once again a correct answer produced by the particular truth mill that is “state phobia.” Foucault warns that this kind of thinking can verge on ~~paranoid~~ (alarmist) fantasy, which ~~sees~~ (perceives) evidence of the ever-growing, increasingly-fascistic state everywhere it looks. In this case, one’s “grasp of reality”103 is not what matters, but rather the endless confirmation and reproduction of the theory itself. It can also issue in absurd (illogical) conclusions, such as the following:

As soon as we accept the existence of this continuity or genetic kinship between different forms of the state, and as soon as we attribute a constant evolutionary dynamism to the state, it then becomes possible not only to use different analyses to support each other, but also to refer them back to each other and so deprive them of their specificity. For example, an analysis of social security and the administrative apparatus on which it rests ends up, via some slippages and thanks to some plays on words, referring us to the analysis of concentration camps. And, in the move from social security to concentration camps the *requisite* specificity of analysis is diluted.104

While Foucault is referencing right-wing fantasies about governmental power (one is reminded of Sarah Palin’s warnings about “death panels” should Obama’s Affordable Health Care Act pass the U.S. Congress), his caution is also apposite to left anarchist discourses that similarly ~~see~~ (perceive) the state as a malevolent principle in itself. In suggesting that the state has no essence or is “nothing else but the mobile effect of a regime of multiple governmentalities,”105 Foucault is not claiming that we should be uncritical of the state or exercises of state power. Quite the opposite. In destabilizing the operative presumptions about the state in history, sociology, philosophy, and politics, Foucault is instead working to make the state something that is possible to critique and resist. We lose sight of this possibility when the state is presumed to be a prime mover of history or politics, an omnipotent principle or an essentially annihilatory institution that culminates, inevitably, in the genocidal logic of concentration camps. Part of the task of proceeding in the exact opposite manner as that of historicism is admitting that mechanisms of power *are* transferable and that they do not exhaustively characterize any particular society.106 Foucault’s resistance to historicism and state phobia, then, are yet further resistances to totalitarianism—of theory (or science) but also of specific state forms and beliefs about the state and its forms that function in totalitarian ways.

As is perhaps already evident, Agamben’s approach to the state in Homo Sacer epitomizes both the historicism and state ~~phobia~~ (“state alarmism”) that Foucault explicitly rejects. Rather than seeking, from below, to untangle and document the subjugated knowledges that have produced existing dominations, Agamben instead seeks to read these latter for what they reveal about the essential workings of Western politics. Indeed, Agamben presumes that power inheres in the sovereign demarcation of the zoē/bios divide, the status of which exhaustively defines life and politics in “the West” (itself an underspecified geographical and historical entity). The method of Homo Sacer is thus clearly expressed in Foucault’s description of “historicism”: Agamben starts from a universalist claim regarding the sovereign exception and then proceeds to examine how history has inflected it in the West. This is what allows him to conflate all versions of the state with the totalitarian one and also to suggest that all versions of sovereignty culminate inevitably in the Nazis’ creation of concentration camps. As he says, the camp is “the hidden paradigm of the political space of modernity, whose metamorphoses and disguises we will have to learn to recognize.”107

Like all declension narratives, this one too echoes the chronology of the fall from grace, except that, in Agamben’s version, the pre-lapsarian moment dates from Aristotle rather than the Creation. The result, however, is a valorized hypostatization of an at-best questionable moment of origin, from which the logic of the events of Western history can be understood to have unfolded and to be still in the process of unfolding to this day.108 At one end, then (at “the beginning,” or archē), stands the Aristotelian distinction between zoē and bios; at the other end (“now,” or in modernity), lie the Nazi death camps. These two moments are tied inevitably, irretrievably together by the exceptional logic of sovereignty:

The totalitarianism of our century has its ground in this dynamic identity of life and politics, without which it remains incomprehensible. If Nazism still appears to us as an enigma, and if its affinity with Stalinism (on which Hannah Arendt so much insisted) is still unexplained, this is because we have failed to situate the totalitarian phenomenon in its entirety in the horizon of biopolitics. When life and politics—originally divided, and linked together by means of the no-man’s-land of the state of exception that is inhabited by bare life—begin to become one, all life becomes sacred and all politics becomes the exception (148, original emphasis).

Nazism will remain “an enigma,” on this telling, insofar as we fail to “situate” it within the essential principle of Western biopolitics—the sovereign exception, the zoē/bios divide. Once we do that, however, the meaning of Nazism becomes clear and we understand how there could ever have been death camps, perhaps the real question Agamben is trying to answer in this text. Already latent in the zoē/bios divide, then, is the concentration camp, which is why its historical development inevitably culminates there.

Agamben’s political theory thus not only re-iterates the assumptions of the sovereign model as Foucault explains it, but itself becomes a kind of totalitarian theory of sovereignty in the West that can only ever issue in the same answer over and over again: the camp. Agamben’s methodological historicism is what allows him to come to the political conclusions Foucault explicitly repudiates above; namely, that there is no meaningful difference between democratic states and totalitarian ones, and this because the sovereign exception is a formation of power that fundamentally defines the entity “Western politics” from its earliest days through to its catastrophic contemporaneity. Thus it is perhaps also unsurprising that Agamben concludes there is no difference between democratic and totalitarian regimes insofar as their “fundamental referent” is bare life; the “only real question to be decided,” he says, is “which form of organization would be best suited to the task of assuring the care, control, and use of bare life.”109 As well, Agamben’s state ~~phobia~~ (“state alarmism”) , in which we can recognize both the “cold monster” and “genetic” versions, predictably culminates, as do the absurdist theories Foucault documents, with nothing other than concentration camps. U(u)nless the enigma of the sovereign exception is solved, Agamben insists, we will remain mired in totalitarianism and death camps: “Today politics knows no value (and, consequently, no nonvalue) other than life, and until the contradictions that this fact implies are dissolved, Nazism and fascism—which transformed the decision on bare life into the supreme political principle— will remain stubbornly with us.”110 The consequence of Agamben’s methodology here is not simply a return to sovereignty, then, but in fact a resurrection of the sovereign and the restoration of his omnipotence in what, following Foucault, can be called totalitarian forms. Agamben’s reading of the text of Western politics from the guiding principle of the sovereign exception leaves us no other option, no other conclusion, than that with which Foucault claims his work is constantly being misinterpreted as saying: “This is the way things are; you are trapped.”111 This outcome is all the more ironic, of course, given that the entire exercise of Homo Sacer was ostensibly spurred by Agamben’s desire to “correct” Foucault’s oversight regarding 20th century totalitarian regimes and, presumably, overcome the disastrous legacy of Nazism and totalitarianism.

\*Note to students: the word “endogenous” means having an internal cause or origin)

#### Elements of the squo echo this call for an untouched market. That pro-rollback perspective would place *millions of lives at risk*.

Gee ‘20

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Ten years ago this month, the Affordable Care Act (ACA) was signed into law. Since then, the law has transformed the American health care system by expanding health coverage to 20 million Americans and saving thousands of lives. The ACA codified protections for people with preexisting conditions and eliminated patient cost sharing for high-value preventive services. And the law goes beyond coverage, requiring employers to provide breastfeeding mothers with breaks at work, making calorie counts more widely available in restaurants, and creating the Prevention and Public Health Fund, which helps the Centers for Disease Control and Prevention (CDC) and state agencies detect and respond to health threats such as COVID-19.

Despite the undeniably positive impact that the ACA has had on the American people and health system, President Donald Trump and his allies have (~~been on a mission~~ (strived) to dismantle the law and reverse the gains made over the past decade—first through Congress and now through a lawsuit criticized by legal experts across the political spectrum. Even if the U.S. Supreme Court rules the ACA constitutional after it hears the California v. Texas health care repeal lawsuit this fall, President Trump’s administration cannot be trusted to put the health of the American people ahead of its political agenda. Trump’s administration hasn’t delivered on Trump’s commitment to “always protect patients with pre-existing conditions.”

The consequences of ACA repeal would be dire:

Nearly 20 million people in the United States would lose coverage, raising the nonelderly uninsured rate by more than 7 percent.

135 million Americans with preexisting conditions could face discrimination if they ever needed to turn to the individual market for health coverage.

States would lose $135 billion in federal funding for the marketplaces, Medicaid, and the Children’s Health Insurance Program (CHIP).

Insurance companies would no longer be required to issue rebates when they overcharge Americans. In 2019, insurance companies returned $1.37 billion in medical loss ratio rebates to policyholders.

The tax revenue that funds the expanded health coverage under the ACA would become tax cuts for millionaires, who would receive an average of $46,000 each.

As the nation awaits a final ruling on the lawsuit, the Center for American Progress is celebrating how the ACA has helped the American people access affordable health care in the past decade. In honor of the law’s 10th anniversary, here are 10 ways in which it has changed Americans’ lives for the better. Each of these gains remains at risk as long as the Trump administration-backed lawsuit remains unresolved.

1. 20 million fewer Americans are uninsured

The ACA generated one of the largest expansions of health coverage in U.S. history. In 2010, 16 percent of all Americans were uninsured; by 2016, the uninsured rate hit an all-time low of 9 percent. About 20 million Americans have gained health insurance coverage since the ACA was enacted. The ACA’s coverage gains occurred across all income levels and among both children and adults, and disparities in coverage between races and ethnicities have narrowed.

Two of the biggest coverage expansion provisions of the ACA went into full effect in 2014: the expansion of Medicaid and the launch of the health insurance marketplaces for private coverage. Together, these programs now cover tens of millions of Americans. Nationwide, 11.4 million people enrolled in plans for 2019 coverage through the ACA health insurance marketplaces. Medicaid expansion currently covers 12.7 million people made newly eligible by the ACA, and the ACA’s enrollment outreach initiatives generated a “welcome-mat” effect that spurred enrollment among people who were previously eligible for Medicaid and CHIP.

2. The ACA protects people with preexisting conditions from discrimination

Prior to the ACA, insurers in the individual market routinely set pricing and benefit exclusions and denied coverage to people based on their health status, a practice known as medical underwriting. Nearly 1 in 2 nonelderly adults have a preexisting condition, and prior to the ACA, they could have faced discrimination based on their medical history if they sought to buy insurance on their own.

The ACA added a number of significant new protections for people with preexisting conditions. One group of reforms involved changes to the rating rules, prohibiting insurers from making premiums dependent on gender or health status and limiting their ability to vary premiums by age. The ACA also established guaranteed issue, meaning that insurers must issue policies to anyone and can no longer turn away people based on health status.

Another crucial protection for people with preexisting conditions is the ACA’s requirement that plans include categories of essential health benefits, including prescription drugs, maternity care, and behavioral health. This prevents insurance companies from effectively screening out higher-cost patients by excluding basic benefits from coverage. The law also banned insurers from setting annual and lifetime limits on benefits, which had previously prevented some of the sickest people from accessing necessary care and left Americans without adequate financial protection from catastrophic medical episodes.

3. Medicaid expansion helped millions of lower-income individuals access health care and more

To date, 36 states and Washington, D.C., have expanded Medicaid under the ACA, with 12.7 million people covered through the expansion. While the Medicaid program has historically covered low-income parents, children, elderly people, and disabled people, the ACA called for states to expand Medicaid to adults up to 138 percent of the federal poverty level and provided federal funding for at least 90 percent of the cost.

Medicaid expansion has led to better access to care and health outcomes for low-income individuals and their families across the country. A large body of evidence shows that Medicaid expansion increases utilization of health services and diagnosis and treatment of health ailments, including cancer, mental illness, and substance use disorder. Medicaid expansion is associated with improvements in health outcomes such as cardiac surgery outcomes, hospital admission rates for patients with acute appendicitis, and improved mortality rates for cardiovascular and end-stage renal disease. Beyond health outcomes, evidence points to improved financial well-being in Medicaid expansion states, including reductions in medical debt and improved satisfaction with one’s current financial situation. A study that assessed eviction rates in California found that Medicaid expansion is “associated with improved housing stability.”

Evidence shows that Medicaid expansion saves lives. According to a 2019 study, Medicaid expansion was associated with 19,200 fewer ~~deaths among older low-income adults from 2013 to 2017; 15,600 preventable deaths occurred in states that did not expand Medicaid. As the Center on Budget and Policy Priorities points out, the number of adults ages 55 to 64 whose lives would have been saved in 2017 had all states expanded Medicaid equals about the number of lives of all ages that seatbelts saved in the same year.~~

#### ~~We do not defend the law in all instances – but in the contingent realm of health provision, government policy is much better than the de facto Alt of an untouched market.~~

~~Parento ‘12~~

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~~Although health equity was not a part of seventeenth-century political discourse, Montesquieu accurately captured the conflict that surrounds the concept today. In theory, people are born with equal potential for healthy lives, yet the minute their lives begin, a confluence of factors render some people immensely more likely than others to have the capability to lead healthy lives. These disparities in individuals' capabilities to achieve good health raise important social justice questions--What obligation does society have to take measures to reduce health disparities based on race or ethnicity, socioeconomic status (SES), gender, sexual orientation, education, disability, and other factors, particularly where behavioral risk factors are a contributing factor to disease? Stated differently, how much “choice” do individuals~~ *~~truly~~* ~~possess regarding their health, and what can and should government do to address the societal influences that negatively impact health status?~~

~~Routinely, society looks at an individual health outcome and ascribes the result to modifiable lifestyle choices, good or bad, with the implicit assumption that people who are healthy deserve praise for their responsible choices and those who are not deserve at least partial blame for failing to act in ways that would improve their health. However, this personal responsibility framework fails at a population level. It is well-documented that there is a socioeconomic gradient to health, in which individuals are likely to be healthier as their socioeconomic status increases. But no serious scholar ascribes population level socioeconomic health disparities to the superior willpower of the wealthy in making healthy lifestyle choices. Similarly, there is a persistent racial and ethnic component to health that is not explained by other factors, pursuant to which certain racial and ethnic groups are more likely to have worse health outcomes than others. But no one argues that African-Americans have worse health outcomes on average than whites because African-Americans are not as motivated as whites to protect their health. There is no basis for making such population-wide generalities about motivation regarding health behavior. Yet in the face of these widespread and presumptively inequitable disparities, the law has done little. This paper argues that coercive legal mechanisms are an essential element of eliminating health disparities and achieving health equity. Moreover, the paper argues that Healthy People 2020 (HP 2020), which is the nation's “master blueprint for health” and explicitly seeks to achieve health equity, has not fully incorporated the principles of health equity in the formulation of its objectives and indicators because HP 2020 fails to recognize the varying distributive effects of policies that could achieve population health targets. To truly incorporate the principles of health equity, HP 2020 should advocate for those demonstrably effective coercive legal mechanisms that would both achieve its population health objectives and reduce health disparities.~~

~~The federal government has monitored health disparities in one form or another since at least 1985 and has advocated for the elimination of health disparities since at least 2000, with the release of the Healthy People 2010 goals. However, decisive action on the reduction of disparities has been lacking, and, on average, disparities have not improved over at least the past fifteen years. Although health equity is a mainstay of health law and policy discourse, the concept has not had a significant role in mainstream political discussions. As it is commonly understood, health equity exists when “all people have an equal opportunity to develop and maintain their health, through fair and just access to resources for health.” There are strong philosophical and social justice reasons that support government action to reduce disparities--among them are human rights principles of equality underlying the right to health; Nussbaum's theory of health as an essential human capability necessary to fully function in life; Amartya Sen's theory of the capability for health as an instrumental human freedom; and principles of equality and nondiscrimination among people based on characteristics such as SES, race or ethnicity, gender, sexual orientation, religion, disability, rural/urban geography, and other characteristics historically linked to discriminatory treatment.~~

~~The question, then, is, What means are both necessary and effective for reducing health disparities and achieving health equity? It is here that distributive consequences of policies become important, leading to the conclusion that coercive legal mechanisms such as direct regulation and taxation are essential to a serious strategy to reduce disparities. While coercive legal mechanisms are not suited to solve every problem and must always be balanced against concern for personal liberties and principles of autonomy, there are many instances in which coercive legal mechanisms are demonstrably~~ *~~the most effective way of reducing health dispariti~~*~~es and improving population health. Unfortunately, when discussing these mechanisms, advocates are often cowed by advocates of “personal choice” into watering down interventions to the point that the likely result is--even with an improvement in population health--no change or a worsening in health disparities. This approach is problematic from a health equity standpoint, given that health equity by its nature requires the elimination of health disparities associated with social disadvantage.~~

~~The U.S. government has made the achievement of health equity and the elimination of health disparities a national priority in HP 2020, recognizing the importance of working toward the realization of health equity. Every ten years since 1979, the Department of Health and Human Services (HHS) issues new “Healthy People” nationwide health goals for the forthcoming decade, the most recent of which are HP 2020. The essential aim of the Healthy People project (the Project) is to establish national health priorities by setting targets for improvement of health across a broad spectrum of topics, ranging from access to health services to environmental health to more discrete diseases such as cancer and heart disease and, for the first time in HP 2020, including the social determinants of health. In some instances, HP 2020 advocates the adoption of specific coercive legal mechanisms that would both further a population health goal and reduce disparities--for example, passage of smoke-free legislation would both reduce overall population exposure to secondhand smoke and more strongly affect disadvantaged groups (who have higher rates of smoking and are more likely to work in places where smoking is permitted), thereby resulting in a reduction in the disparity in rates of exposure to secondhand smoke. This advocacy is laudable. However, in most instances, HP 2020 chooses to set broad, population-based targets for health measures without expressing a preference between means of achieving those targets, as in the case of access to health insurance coverage, where HP 2020 sets a target of 100% coverage without acknowledging the obvious--that there is no evidence that anything other than a coercive legal mechanism is a realistic way to achieve that goal.~~

~~The determination of which coercive legal mechanisms HP 2020 supports appears to be made not on the ground of epidemiological evidence of a policy's effectiveness; rather, HP 2020 seems to be willing to advocate for direct regulation only in areas that are relatively politically uncontroversial, such as helmet laws and certain tobacco control measures. This paper argues that a true internalization of the principles of health equity requires that HP 2020 acknowledge the predictably different distributive consequences of various policy interventions and urge the adoption of those coercive legal mechanisms that are demonstrably effective in reducing health disparities. Without such a framework under which to operate, the likely result is that, even if overall population health improves, health disparities will widen between the most vulnerable population groups and the already advantaged, or remain essentially stagnant, as they did under HP 2010.~~

~~More broadly, this paper argues that health equity demands the use of coercive legal mechanisms in certain circumstances given the existence of current disparities and the evidence of effectiveness of direct regulation as compared to its alternatives. This is true for a number of reasons, including that purely voluntary policy initiatives often result in little impact on the most vulnerable populations (e.g., in the case of trans fat initiatives, discussed infra Part III.B.3), and because market-based initiatives have failed to adequately account for the health needs of certain population groups (as in the case of access to health services, discussed infra Part III.B.1). Only with a candid assessment and acceptance of the critical role that coercive legal mechanisms play in furthering population health can progress be made toward the achievement of the HP 2020 goals and ultimately, health equity. Part II of this paper discusses health equity in the U.S. and how HP 2020 incorporates health equity into its goals. Part III discusses the importance of law in public health and health equity and uses specific HP 2020 goals and objectives as examples of the essential role of coercive legal mechanisms in achieving those goals while also furthering health equity. Part IV proposes certain additional legal mechanisms that could inform selection of strategies for achieving the HP 2020 goals and health equity, including the use of a “health in all policies” approach to government, the use of health impact assessments in policymaking, and the use of various indices to measure the effects of various policies and assess progress toward disparities reduction.~~

# 2AC

## Federalism Adv

### 2AC OV

Synthetically-produced diseases already exist – a lab accident coming within 10 years and millions of people will die. That impacts outweighs – it access both teams frameworks because the impact would disparately impact communities lacking privilege.

The Alt – even if it functioned perfectly to end the State – would have no apparatus to stop these lab releases.

Narrowly and contingently retaining government is the LONE viable path. It wouldn’t re-create all the USFG writ-large – it would simply regulate these labs AND to promote counter-research to check their inevitable release.

## NP Shortage Adv

### 2AC – OV

#### 32 States block Nurse Practitioners and that kills hundreds of people each day.

#### The Aff’s empirical solvency supports our malleability thesis – States that got rid of Scope of Practice laws have better outcomes than those that didn’t.

#### Even if we somehow didn’t solve this advantage, we’d still independently win on a disad that we’ve framed vs. the Alt.

#### Our Schotten ev impact turns their State Links – proves the K’s logic defaults to an untouched market. Millions die from ACA rollback.

#### That internal link turns their identity impact – AND it outweighs because the same premise holds for every identity formulation. It’s unique because our Gee ev proves the ACA is a contingent reform that at least supports health equity now.

#### Here’s more ev establishing unique offense vs. the Alt.

Garrett ‘16

et al; A. Bowen Garrett is an economist and senior fellow in the Health Policy Center at the Urban Institute. His research focuses extensively on health reform and health policy topics, combining rigorous empirical methods and economic thinking with an understanding of the policy landscape to better inform policymaking. Previously, Garrett was chief economist of the Center for US Health System Reform and has taught quantitative methods and economic statistics at Georgetown University. “Who Gained Health Insurance Coverage Under the ACA, and Where Do They Live? ACA Implementation—Monitoring and Tracking” - December 2016 #E&F – modified for language that may offend - https://www.urban.org/sites/default/files/publication/86761/2001041-who-gained-health-insurance-coverage-under-the-aca-and-where-do-they-live.pdf

The Affordable Care Act (ACA) became law nearly seven years ago. Today the number of Americans lacking health insurance ~~stands~~ (is) at a historic low, and the ACA is credited with reducing the number of uninsured by about 20 million. In this brief, we take stock of who has gained coverage since 2010 and where they live. Using data from the American Community Survey, we examine health insurance coverage changes from 2010 to 2015 by demographic groups based on age, gender, race/ethnicity, education status, and state. Our main findings are as follows:

• An estimated 19.2 million nonelderly people gained health insurance coverage from 2010 to 2015, based on our analysis that accounts for population changes over the period.

• Coverage gains were broad-based; the number of uninsured fell substantially among all Americans under age 65, for both men and women, and across subgroups based on race/ethnicity, levels of educational attainment, and states.

• An estimated 2.8 million children from birth to age 18 gained coverage, suggesting that coverage expansions under the ACA and other policy changes for children’s coverage implemented from 2010 to 2015 reached children in families above the progress made by prior expansions targeting low-income children.

• The number of uninsured adults ages 19 to 34 declined by 8.7 million (42 percent), and the number of uninsured adults ages 35 to 54 declined by 5.6 million (33 percent). More than 2 million adults ages 55 to 64, who are at or approaching typical retirement ages, gained coverage from 2010 to 2015.

• Approximately 5 million women of childbearing age (19 to 44 years old) gained coverage from 2010 to 2015.

• Among those gaining coverage from 2010 to 2015, 8.2 million (43 percent) were non-Hispanic white, 2.8 million (15 percent) were non-Hispanic black, 6.2 million (32 percent) were Hispanic, and 2.0 million (10 percent) were other non-Hispanics.

• The large majority (87 percent) of adults gaining coverage from 2010 to 2015 did not have a college degree. Among them, 6.2 million were non-Hispanic white and 7.9 million were nonwhite or Hispanic.

• Americans in every state gained health insurance coverage. States that expanded Medicaid under the ACA saw larger percentage reductions in their number of uninsured residents than did states that chose to not expand Medicaid (45 percent compared with 29 percent). Nonetheless, 6.9 million people living in states that did not expand Medicaid gained health insurance.

• California’s uninsured rate fell 53.4 percent, translating into 3.8 million people gaining coverage. More than 2.3 million people gaining coverage from 2010 to 2015 lived in the Midwestern states of Illinois, Michigan, Ohio, and Wisconsin, with uninsured rates declining between 38 and 49 percent. Florida and Texas, two non-expansion states in the South, saw about 3.3 million people gain coverage as statewide uninsured rates fell 36 percent and 27 percent, respectively.

Congress is now considering options to repeal and replace the ACA. Repeal of the ACA without new policies capable of maintaining the coverage gains achieved since 2010 would result in millions of Americans, of all ages and backgrounds and in all states, losing health insurance along with the access to health care and financial protections it affords.

### 2AC – Health Ks – No Link

#### No case turn-Their Ks of health, healthcare, and physicians don’t contextualize to NPs – there’s a distinction between medicine and nursing – their Ks are about “medical work” but NPs aren’t simply facsimiles for physicians. NPs provide “care work” that’s a transformative approach to the medical encounter that accounts for social and economic determinants of health outcomes

#### NPs professional norms are fundamentally different from physicians – their approach to care includes addressing social determinants and providing holistic care

Entman 20 [Liz Entman, Vanderbilt University Medical Center reporter, internally citing LaTonya J. Trotter, Assistant Professor of Sociology at Vanderbilt, 6-10-2020 https://news.vanderbilt.edu/2020/06/10/nurse-practitioners-practice-more-than-medicine/]

In More than Medicine: Nurse Practitioners and the Problems They Solve for Patients, Health Care Organizations, and the State, Trotter observed the work of a group of nurse practitioners at a clinic that served 400 elderly African American patients with complex health problems and limited financial resources. What she realized was that NPs were not simply healthcare professionals capable of performing virtually all the same tasks as physicians, but they also worked to solve many other non-medical challenges their patients faced related to poverty. In many cases, these problems may have once been addressed through the public social safety net, but no longer are—or never have been.

“It’s not just a question of high demand and scarcity of providers that nurse practitioners can help bridge,” she said. “The problem is that the work NPs do tends to reflect a broader lack of coordinated health care by the state. In the United States, medical care is privately provided, but 75 percent of it is publicly funded. What I observed raises important questions about how government could reconsider what it means to fund health care.

Transforming the medical encounter

The nurse practitioners Trotter observed were not solely focused on the medical challenges their patients faced. They also ended up dealing with the dozens of other issues that impacted their ability to care for themselves, such as going grocery shopping, keeping up with their homes or finding someone to help a patient with post-operative care.

“Many of the problems health care organizations—and nurse practitioners especially—are tasked with solving aren’t just medical problems, but social ones,” Trotter said.

Utility players for their organizations

Trotter found that nurse practitioners filled a number of roles that were not directly related to medical care. That could mean picking up administrative tasks, coordinating care with other providers and addressing customer service issues. Not only were they providing holistic care to their patients, she said, they were providing holistic care, in a way, to their employer. That willingness reflects a distinctly nursing perspective, Trotter said.

“Nurses really do feel that their roles are different than physicians’,” she said. “So they’re not always doing this extra work simply because they feel pressed into it, but because their professional norms orient them toward feeling that this is part of what it means to be a nurse. They’re much less likely to look at a task and say, ‘That’s not my job.’ They’re much more likely to do that work on behalf of their employer as well as their patients.”

## T

## Topicality

#### ( ) This is not a Topicality arg – it’s a vagueness arg.

That’s meaningful – because all their reasons to vote neg draw upon being “not topical” – but we are as specific as the wording in the resolution.

#### ( ) We meet– the USFG is a specific-enough of an actor.

It provides ample ground for disads related to anti-trust policy – or trade disads that contrast the USFG relative to other nations.

#### ( ) Reasons to Prefer

Their interp infinitely regress – justifying Senator-specification, which comes-with new PIC’s that crush topic education and center the round on actors, instead of actions.

It also avoids situations where the Aff strategically over-specifies in order to dodge disad links – like using some tiny subsection of the FTC.

#### ( ) Normal means and Disad checks – the Neg can just read a card about how the plan would play out. That applies to both the “Core Antitrust” and “Agent” vagueness threads

#### ( ) We meet the other vagueness violation

Parker immunity grants immunity from each of the three Core Antitrust Laws – that’s how exemptions function.

#### ( ) There’s no obligation to specify beyond the terms of the resolution.

Any other standard is contrived and designed boost Neg strategy at the expense of topic-education.

#### ( ) Contradiction

Their desire for specificity is much greater for the aff plan than it is for the Neg Alt – which is totally vague on questions of actors and implemtnation.

#### ( ) Not a voting issue

At best, this is simply a reason to allow the Neg to have a link to specific agencis or Core antitrust PIC’s.

Not t- topic doesn’t say those things they say core topic does not say congress or court it says USFG not not topical if not specified

A way a immunity works in a legal sense is that it creates a new standard that exempts you from anti trust laws

When you apply for an immunity it cuts across all antitrust laws, we lift that exemption so they are prone to any of the three, we are a very fair aff because we just end parker immunity for a bunch of stuff

Vagueness is good it prevents two bad things

1. Its a spiraling infinite regress, move the debate away from antitrust and instead debating specification, neg is not asking out of altruism, they are asking to skirt topic knowledge

2. It helps the negative- with a high level of detail we would choose an agent that removes neg ground

The amount of detail that we have given them about our aff is in depth- they have not given us the same amount of detail for their alt

We have to live in a world where not all detail is there and we don’t get trapped in a debate about detail and actually debate the topic

#### Prohibitions significantly hamper business-as-usual --- neg definition is too narrow to have real world application

Ward 21 --- Christine Ward, judge on the Allegheny County Court of Common Pleas, COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA, 3/22/2021, https://www.leechtishman.com/wp-content/uploads/2021/03/Ungarean-Opinion.pdf

This Court is not persuaded by Defendant’s argument that, in order to be entitled to Civil Authority coverage, the action of civil authority must be a complete and total prohibition of all access to Plaintiff’s property by any person for any reason. If this Court were to accept Defendant’s cramped interpretation of the phrase “prohibits access,” it would result in businesses being precluded from coverage in nearly every instance where an action of civil authority effectively closes the business to the vast majority of the general public, but does not necessarily preclude employees, or certain other individuals, from entering the premises to clean, maintain the building, obtain important documents, or to perform other similar functions, which, while important, remain secondary to the activities that actually generate business income.

Once again this Court notes the importance of reading the insurance contract’s provisions as a whole so that all of its parts fit together. In so doing, this Court recognizes that the insurance contract provisions at issue are generally designed to provide business owners with coverage for lost busines income in the event that their business’ operations are suspended. Accordingly, this Court’s primary focus when interpreting the phrase “prohibits access,” at least in the context of this insurance contract, is the extent to which the action of civil authority prevented the insured from accessing its premises in a manner that would normally produce actual and regular business income. Given this understanding of the insurance contract, the fact that some employees, and even some limited number of patients, were still permitted to go to Plaintiff’s property for emergency procedures does not necessarily mean that Plaintiff is altogether precluded from coverage under the Civil Authority provision. The contract merely requires that “an action of civil authority . . . prohibits access to” Plaintiff’s property. It does not clearly and unambiguously state that any such prohibition must completely and totally bar all persons from any form of access to Plaintiff’s property whatsoever.

#### ~~Substantial burdens are prohibitions~~

~~Axtell 03 --- Katie Axtell, J.D. Candidate 2004, Seattle University School of Law, “Public Funding for Theological Training Under the Free Exercise Clause: Pragmatic Implications and Theoretical Questions Posed to the Supreme Court in Locke v. Davey”, Seattle University Law Review , 2003, https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1783&context=sulr~~

~~The threshold question in any free exercise inquiry is whether state action has prohibited a religious observer's belief or practice. The Free Exercise Clause of the First Amendment fundamentally protects against government prohibition of religious belief or practice: "Congress shall make no law . . . prohibiting the free exercise [of religion]. 82 As Justice O'Connor has stated, "The crucial word in the constitutional text is 'prohibit': 'For the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government.""' Within free exercise jurisprudence, the term "prohibit" can be defined simply as "to forbid or prevent," 84 or the term can be defined as limitedly encompassing substantial burdens placed on religious observers by the government." In addition to outright prohibitions, indirect coercion or penalties that discourage the free exercise of religion are subject to First Amendment scrutiny.86 However, as Justice O'Connor notes,~~

~~This does not and cannot imply that incidental effects of government programs, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs, require government to bring forward a compelling justification for its otherwise lawful actions.8 7~~

~~Government actions that constitute a prohibition under the First Amendment can be illustrated by analyzing state-instituted barriers, as interpreted by the Supreme Court in two seminal free exercise cases, Smith and Sherbert."s First, the classic setting of government prohibition of a religious observer's belief or practice is where an enacted law specifically outlaws a particular practice. In Smith, for example, state law prohibited the plaintiffs from ingesting peyote, a hallucinogenic drug from the stem of the peyote cactus.8 9 Possession of peyote is a Class B felony under Oregon law.9 " However, members of the Native American Church use peyote for sacramental purposes in a Saturday all-night ritual of prayers and songs.9 The act of eating, smoking, or drinking peyote "brings peace and healing, resists alcoholism, and gives visions of the Peyote Spirit who is regarded either as Jesus or an Indian equivalent."92 By outlawing the use of peyote, Oregon placed an affirmative barrier between the members of the Native American Church and their sacramental ingestion of peyote, which is a central tenet of their religious practice.~~

~~The second setting in which the Court has found a barrier to free exercise is where the government imposes a substantial burden on a religious observer's belief or practice. In Sherbert, the plaintiff was a Seventh-day Adventist, who, because of religious beliefs, would not work on Saturdays;93 she was thus declared ineligible for state unemployment benefits.94 In the Seventh-day Adventist tradition, Saturday is reserved as the Sabbath, a day of rest for practitioners when working is forbidden. The Court held that this disqualification prohibited her free exercise because the plaintiffs "declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable."96 Sherbert represents a limited broadening of the scope of the term "prohibit" to include laws that substantially burdened a particular practice but did not prohibit it outright. 97~~

## Expand

### 2AC --- Scope = Boundary & Application

#### Scope refers to BOTH the letter of the law and the application --- topical affs can expand EITHER

Surden 11 --- Harry Surden, Associate Professor of Law, University of Colorado Law School, “Efficient Uncertainty in Patent Interpretation”, 2011 https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1185&context=articles

One can understand scope-of-law issues through at least two distinct analytical frameworks: one oriented upon boundaries and the other upon function. In one sense, the scope of any legal right, including a patent claim, concerns the demarcation of legal boundaries. Within law the term "legal scope" refers to both the coverage and non-coverage of a given law.96 The concept of scope suggests that application of a given legal rule will be, in some sense, limited. To reference a law’s scope is to imply that a law will not apply to all future entities, objects, and behaviors, but to some limited subset.97 From that perspective, legal scope is related to the substantive criteria by which we differentiate, ex ante, the subset of legal actors, objects, behaviors, and states that will be subject to a law’s differential treatment or legal consequences.98 A scope boundary is the "line" distinguishing that which is covered by a law from that which is not. In this sense, critiques of legal scope generally tend to focus upon demarcation of legal boundaries via the legal criteria chosen ex ante.

Within the patent claim context, questions of literal scope are, in many respects, similarly concerned with boundary-defining criteria. A primary emphasis is on the claim words and interpretive information upon which a lay observer must rely to distinguish infringing products from noninfringing products.99

Legal scope can also be understood through a related but distinct functional definition. In this orientation, we are not so concerned with legal boundaries for their own sake; rather we ask how well those boundaries perform their functional role of distinguishing specific identifiable entities or behaviors that violate a given law and are accordingly subject to its differential legal consequences. This approach to scope directs us to decompose our abstract legal categories into particular legal entities and to make specific determinations as to whether they do or do not "violate" the criteria of the law. Under this functional conception, one can characterize formal notice about patent scope by the extent to which the words of the patent claim establish boundaries that distinguish real-world objects covered by a patent claim from those that are not.

This functional framing of patent claim scope highlights a key point— claim scope is a relative formulation. It is not sufficient to simply focus on the inadequacy of the claim-word boundaries in the abstract. Rather, we must evaluate the scope of a patent claim by its ability to effectively classify the relevant universe of potentially accused products and to do so in a way that is not over- or underbroad. Any inquiry into the sufficiency of the delineation of the patent claim’s scope should be considered relative to the class of accused devices potentially inside or outside its scope. If we aim to critique a claim for having an uncertain scope, we should do so in relation to the class of products that may or may not potentially infringe. The heart of the scope inquiry is functional—to delineate and distinguish those products that literally infringe from those that do not. The import of this functional and relational component of patent scope will be apparent later when exploring strategies for improving ex ante scope certainty.

### ~~Aff --- Scope = Enforcement~~

#### ~~Enforcement expands the scope --- neg interp makes nothing topical because FTC scope is undefined~~

~~Buchanan 11 --- Buchanan, Ingersoll & Rooney PC, Law Firm, “FTC Files New Section 5 Suit Against Intel, Broadening the Scope of Federal Antitrust Enforcement”, APR 5 2011. https://www.bipc.com/ftc-files-new-section-5-suit-against-intel,-broadening-the-scope-of-federal-antitrust-enforcement~~

~~On December 16, 2009, the Federal Trade Commission made a renewed bid to expand the scope of federal antitrust enforcement by filing suit against Intel Corporation under Section 5 of the FTC Act for alleged unfair trade practices against competitors in the microprocessor market.~~

~~The FTC complaint alleges that Intel entered into anticompetitive vertical agreements with computer manufacturers, offered selective discounts, redesigned its compilers and libraries specifically to reduce their performance with competing central processing units ("CPUs"), and took other action designed to make it harder for competitors to enter the market either for CPUs or for graphics processing units ("GPUs").~~

~~The scope of Section 5 is broader than the Sherman or Clayton Acts~~

~~While the FTC complaint contains multiple references to Intel's monopoly power and its actions' effects on competition, the complaint is not brought under the Sherman or Clayton Acts, but under Section 5 of the FTC Act, 15 U.S.C. § 45 et seq. Section 5 was designed to supplement the traditional antitrust laws enforced by the Antitrust Division of the Department of Justice, giving the Commission broader authority while limiting the remedies available to it.~~

~~Section 5 prohibits "unfair methods of competition … and unfair or deceptive acts" affecting interstate commerce. 15 U.S.C. § 45. Congress left this language intentionally vague to give the FTC the leeway to address new and creative attempts to circumvent existing antitrust law, and the courts have consistently held that the Commissioners may use Section 5 to attack conduct that would fall either within or outside the scope of the Sherman or Clayton Acts. In practice, the FTC has used Section 5 to prosecute behavior that fell within either the letter or the spirit of the Sherman Act, and for practical purposes the FTC's enforcement authority has therefore been almost coequal with the authority of the Department of Justice, Antitrust Division under the Sherman Act.~~

~~The FTC widens the gap between public and private enforcement~~

#### ~~A liberal interpretation of antitrust law expands the scope~~

~~Barker 05 --- William Barker, Professor of Law, Penn State Dickinson School of Law, Visiting Professor of Law, The London School of Economics and Political Science, “Expanding the Study of Compar Expanding the Study of Comparative Tax Law t ax Law to Promote Democratic Policy: The Example of the Mo olicy: The Example of the Move to Capital Gains o Capital Gains Taxation in Post-Apartheid South Africa”, Winter 2005, https://ideas.dickinsonlaw.psu.edu/cgi/viewcontent.cgi?article=1044&context=fac-works~~

~~The promise of democratic economic reform contained in income tax law is closely tied to the role legal method plays in either limiting the scope of tax legislation through literal, conservative interpretation, or expanding the scope through purpose-based, liberal interpretation. The actual process of interpretation reflects different views society has of social life and the appropriate goals of a democratic society. There exist strongly advocated and contradictory ideological conceptions of the relation between the individual and the collective~~

## K

#### Framework—debate is about the plan’s desirability—key to fairness because the plan is the locus of aff offense and there are infinite arbitrary neg frameworks

#### Perm – do plan and all non-competitive parts of the alt

### 2AC – Top level

#### ( ) Zero link or Double-bind.

Plan is Negative State Action. It solely uses the USFG to remove a presently-extended Parker immunity standard. Facially, plan text means less government.

That either DOESN’T LINK – OR it begs the question of how the Alt could reduce current Positive State Actions WITHOUT ever leaning on State appartus.

#### ( ) Perm – plan and all non-competitive parts of their alt

None of their links assume the incredibly contingent move of reducing Parker immunities.

#### ( ) Framework:

#### Prefer ballot roles where Affs access their impacts. Anything else means “impact calc is disguise”. Neg impact can’t be the lone criteria – it’s not ethical unless we consider the externalities of the Neg’s failing Alt. This contextualizes bc 1AC accesses social injustice.

Chandler ‘14

(David Chandler is Professor of International Relations at the Department of Politics and International Relations, University of Westminster – “Beyond good and evil: Ethics in a world of complexity” – International Politics, Vol. 51, No. 4 (2014), pp.441-457 Available at: http://www.davidchandler.org/wp-content/uploads/2014/10/International-Politics-Evil-PUBLISHED-2.pdf)

Self-reflexive ethics redistribute responsibility and emphasize the indirect, unintended and relational networks of complex causation. Collective problems are reconceived ontologically: as constitutive of communities and of political purpose. This is why many radical and critical voices in the West are drawn to the problems of 'side effects', of 'second-order' consequences - of a lack of knowledge of the emergent causality at play in the complex interconnections of the global world. The more these interconnections are revealed, though the work of self-reflexivity and self-reflection, the more ethical authority can be regained by governments and other agents of governance. We learn and learn again that we are responsible for the world, not because of our conscious choices or because our actions lacked the right ethical intention, but because the world's complexity is beyond our capacity to know and understand in advance. The unknowability of the outcomes of our action does not remove our ethical responsibility for our actions, it, in fact, heightens our responsibility for these second-order consequences or side effects. In a complex and interconnected world, few events or problems evade appropriation within this framing, providing an opportunity for recasting responsibility in these ways. The new ethics of indirect responsibility for market consequences can be ~~seen~~ (observed) clearly in the idea of environmental taxation, both state-enforced through interventions in the market and as taken up by both firms and individuals. The idea that we should pay a carbon tax on air travel is a leading example of this, in terms of governmental intervention, passing the burden of such problems on to 'unethical' consumers who are not reflexive enough to consider the impact of package holidays on the environment. At a broader level, the personalized ethico-political understanding that individuals should be responsible for and measure their own 'carbon footprint' shifts the emphasis from an understanding of broader inter-relations between modernity, the market and the environment to a much narrower understanding of personal indirect responsibility, linking all aspects of everyday decision making to the problems of global warming (see, for example, Marres, 2012). The shared responsibility for the Breivik murders is not different -ontologically - from the societally shared responsibility for global warming or other problematic appearances in the world. Through our actions and inactions we collectively constitute the frameworks in which others act and make decisions -failing to raise our voice against 'borderline racism' or extremism in a bar makes us indirectly responsible for acts of racism or extremism in the same way that failing to save water or minimize air travel makes us indirectly responsible for the melting polar ice caps.

#### ( ) Alt fails and policy framework’s is valuable to learn *even if fiat’s not real.*

Bryant ‘12

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

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

#### ( ) Perm – do the Alt. Doesn’t sever – that’s our Negative State Action thread.

#### ( ) Neg conditionality uniquely bad – they can’t “judge kick” and default to an ethics disad. Not reciprocal – plan can’t be kicked. Hurts depth of education by making Alt “no cost”. Voter.

#### ( ) Zero link to their Health Care K’s

\*Access\* differs from \*care\* - we’re the former – and don’t force patients to go to the doctor.

We aren’t the old National Health topic. The Aff simply gives a deeper menu of options.

Their skeptical K inverts the error – it reaches a deeply personal conclusion on behalf of every possible patient. That denies patient agency.

#### It’s not solely defense

Their K is problematic – the logic extension would over-correct and push all people lacking socio-economic privilege away from treatment writ-large.

The better mid-ground is to place faith in patient agency – not pushing away from needed medical treatments altogether, but maximizing options for the patient to consider. Patients will navigate away from wretched or violent medical advice.

#### ( ) Perm solves

#### We can certainly lift SOP restrictions and endorse whatever alternate modes of health that’s endorsed by the K. At no point did the Aff commit Nurse Practitioners to engaging in the kinds of health care examples the Neg’s critiquing.

#### ( ) We’re the opposite of their link

#### 1AC McMichael proves local elites and the AMA steer towards “physician-only” models. NPs can augment conventional medical models with greater nuance and cultural appreciation.

Heath 20 [Sara Heath, health care journalist for PatientEngagementHIT 7-20-2020 https://patientengagementhit.com/news/why-nurse-practitioners-are-pivotal-in-health-equity-work]

When COVID-19 first came ashore in the United States, it quickly became apparent that the virus would bring to light racial health disparities that have long pervaded the healthcare industry.

It didn’t take long for the virus, which can become more harmful when an individual has comorbidities, to show itself more harshly among certain populations. Across the country, more Black patients have suffered from COVID-19 and in worse forms, according to Centers for Disease Control & Prevention (CDC) data.

In the agency’s weekly report ending on July 11, 2020, CDC said there were 227.1 COVID-19 hospitalizations per 100,000 non-Hispanic Black patients, compared to only 49 COVID-19 hospitalizations per 100,000 white patients.

For non-Hispanic American Indian or Alaska Native patients, that rate came in at 273 hospitalizations per 100,000 patients, and 224.2 hospitalizations per 100,000 Latinx patients.

Across the industry, leaders were largely unanimous in saying that these health disparities are not new in the age of coronavirus; instead, coronavirus has shown an unflattering spotlight on health disparities that were already there.

“Sadly, the health disparities that are making the news today aren't new and they're not specific to COVID-19,” said Sophia Thomas, DNP, APRN, FNP-BC, PPCNP-BC, FNAP, FAANP, the president of the American Association of Nurse Practitioners (AANP).

For Thomas, health inequity has been a long-standing issue. Nurse practitioners and those working within the AANP specifically have been sounding the alarm on healthcare disparities for years, she said. The current climate with COVID-19 has provided a tangible example of how health inequities ultimately manifest.

Health inequities start with the social determinants of health, Thomas explained, and how those social risk factors limit an individual’s ability to achieve wellness. Because traditionally underserved populations, like Black, Hispanic, and Indigenous populations, must contend with structural and cultural limitations to care and other resources, they adversely experience social determinants of health.

“When you think about long-term health outcomes and assisting in staving off short-term health complications, providers need to consider things such as poverty, economic stability, safe and accessible housing, and food security,” Thomas, a practicing nurse practitioner herself, told PatientEngagementHIT.

“We talk about food deserts, dependable transportation, and then probably most importantly from our aspect, training and education that provides a pathway for all patients to have greater access to primary care.”

Again, this isn’t a new trend, Thomas acknowledged. Decades of institutional inequities have set the stage for a health equity crisis to come to bear like it has during the COVID-19 pandemic.

“Really, the CDC's recent racial and ethnicity data are proof positive that health systems, policy makers, healthcare providers all need to work together now more than ever to stop the COVID-19 impact on communities of color,” Thomas explained.

And it’s nurse practitioners who can play a pivotal role in that, she asserted.

“What makes us unique is that we have a foundation in nursing and with that we also have a holistic approach to patient care,” Thomas stated.

“So when we, for example, tell a patient she has diabetes and give her a prescription for her medication, we're not just prescribing medication and saying ‘follow up with us in three months.’ We're making sure that she can afford that medication. We're discussing with her at that time some diet and lifestyle changes.”

And it’s that very discussion that Thomas said truly makes a different in self-management for a chronic illness and can ultimately tame those comorbidities that have manifested themselves during the COVID-19 outbreak.

Delivering that care management across every community, especially traditionally underserved ones disproportionately experiencing social determinants of health, will be the first step to addressing health equity, at least on a micro scale.

“The most important thing is listening. But with that, before we start the office visit or discussing the reason why patients are there, we may just do a little bit of small talk to get to know them to hear about their life,” Thomas advised, outlining what an encounter that addressing social determinants of health with a nurse practitioner can look like.

“In hearing the stories, they key us into possible issues that may happen,” Thomas said.

During the coronavirus pandemic specifically, Thomas has been taking advantage of the widespread use of telemedicine to understand the social circumstances in which her patients live. Telemedicine lets Thomas see her patients’ housing situations, or during a conversation about nutrition Thomas can prompt her patients to show her their pantries, if they are interested and engaged.

And perhaps most important, nurse practitioners are poised to establish trust with their patients, something that is essential for discussing sensitive topics like social needs and is important when working with traditionally marginalized communities.

“We call on our nursing foundation of compassion and empathy to build a relationship with patients and their family members,” Thomas explained. “Surveys year after year show that nurses are listed as one of the most trusted professions.”

Patients will tell Thomas things they have never felt comfortable admitting to their doctors, she shared, underscoring the important role nurses play in being a trusted confidante for underserved patients.

But nurse practitioners can’t accomplish these goals without some support. Importantly, Thomas said nurse practitioners need expanded scope of practice regulations in order to fulfill their potential while treating patients.

“There are 77 million Americans that live in communities that don't have adequate access to primary health care, and about 80 percent of rural America is actually designated as medically underserved,” Thomas said.

At the same time, the 10 states with the best health outcomes also have the most flexible scope of practice laws for nurse practitioners, Thomas said, citing the US News and World Reports rankings. In the 10 states with the worst health outcomes, nurse practitioners face the strictest scope of practice laws.

When access to quality care is at the crux of health inequities, Thomas said this is a huge issue.

### Agency disad – 2AC

#### Agency disad vs. the K – we can win on this alone.

#### Extend 1AC Hudson – Medicine used to be the site of power imbalances. That’s dated, patients are NOT passive consumer. They single-out bigoted doctors and highlight them to their communities. Power dynamics are increasingly inverted.

#### This is MORE THAN DEFENSIVE.

#### Their K’s denies *the option* of health access. That hurts agency and advances the violently essentialized trope of the passive black patient.

Hudson ‘15

Dr. Janella Nicole Hudson is now with The Centers for American Indian and Alaska Native Health at The Colorado School of Public Health. Specifically, the author is a postdoctoral fellow in the department of Health Behavior and Outcomes at the Moffitt Cancer Center where Janella contributes to the study of doctor-patient communication with adolescent and young adult cancer patients. The author also serves as the Program Manager for Education and Research at The Academy of Communication in Healthcare. Janella’s research examines health communication processes with diverse medically underserved groups, including black patients, to produce culturally tailored educational interventions. Janella’s research features expertise in Qualitative Social Research, Communication and Media. The methodology for this paper studied a cohort consisting solely of those that identified as black patients. The cohort was predominately “low income” – which the authors define as having an annual income of less than $30,000.00 per year. The cohort was predominately those that identified as “black women”. The paper is a follow-up to a larger principal study by Dr. Louis Penner of Wayne State University. In that parent study, 98.5% of participants identified as black. This paper was written while the author held an MA and was the author’s dissertation paper for obtaining a PhD. "Agency And Resistance Strategies Among Black Primary Care Patients" (2015). Wayne State University Dissertations. Paper 1340. Submitted to the Graduate School of Wayne State University, Detroit, Michigan in partial fulfillment of the requirements for the degree of DOCTOR OF PHILOSOPHY - #CutWithRJ - <http://digitalcommons.wayne.edu/cgi/viewcontent.cgi?article=2339&context=oa_dissertations>

Discussion of Goal and Agenda Setting/Management. Participants' demonstrations of patient agency throughout the diagnosis and treatment sequences of the interaction signal a clear intent to participate and partner with the physician. *Previous* literature has examined how the process of setting the agenda during the medical visit often disadvantages the patient, as the physician often chooses a patient problem to discuss without fully exploring the patient's full spectrum of concerns (Marvel, 1999). Manny and Ray (2002) for example, describe a pattern of agenda setting that often consists of the physician initiating the opening sequence with a name exchange/check, brief pleasantry and a first topic initiator. As the interaction continues, the authors note that the inherent power imbalance within the dyad becomes evident as the physician assumes his prerogative to speak first and then manages the agenda for the duration of the interaction. Our findings, however, demonstrate that participants were comfortable exerting their agency in order to influence the unfolding of the interaction and shepherd the physician back to their previously identified topics of interest as needed. This vigilance and focus is understandable when interpreted within the larger context of the interactions. Several participants reported not having received medical care for an extended period of time, and as a result, several health issues that required treatment had accumulated. Participants were aware of the time constraints of the medical visit and therefore worked strategically to ensure that all of their needs could be addressed during the interaction.

In addition to setting the agenda, participants demonstrated a clear desire for partnership with their physician when reviewing treatment plans and determining their suitability. While literature shows that not all patients want to participate in decision making (Levinson, Kao, Kuby, & Thisted, 2005) and that physicians often underestimate black patients' desire for partnership during the interaction (Street & Haidet, 2011), our findings clearly show that some patients desire partnership from their physicians when reviewing, discussing and deciding upon diagnosis and treatment.

Participants in our study consistently pressed physicians for additional information and details concerning their decision-making during clinical interactions, and these findings mirror some findings in existing literature. Cooper-Patrick et al. (1999) reported that black patients rated their medical visits as less participatory when compared with white patients. However, participants in our study assumed a more active role when discussing diagnoses and treatments, often in response to a minimal education and explanation on the part of the physician. The vigilance that participants demonstrated during these interactions is justified as participants identified instances of misinformation and inadequate understanding of patients' health concerns. Our findings show that black primary care patients can actively participate and partner with the physician during the clinical action, and perhaps are more motivated to do so when the attempting to optimize the visit's outcomes.

It should be noted that all of our participants, who consist of low-income, black patients with a history of discrimination, demonstrated agency during interactions with physicians. The nature of these interactions, coupled with participants' explanations of how information, services and resources were often badly needed, show that ~~these patients were proficient in demonstrating "active" or agentive behaviors in order to obtain health resources. In fact, it is safe to assume that these patients were already active, or already equipped to exercise their agency when interacting with the physician. This is compelling, given that much of patient-centered literature does not reflect this population in this way. These findings show that these marginalized patients are capable (without prior prompting) of demonstrating active behaviors, and as a result of having to endure constraints in access to healthcare and health services, they may become more proficient or likely to exercise their agency.~~

~~RQ 3a: What are the resistance strategies used among marginalized patients with a history of previous discrimination?~~

~~Resistance strategies consisted of participants' efforts to challenge and reject the physician's recommended diagnosis or the recommended treatment plan. We reviewed previously identified instances of patient agency in order to identify the instances in which patients' enactments of agency simultaneously functioned as resistance. As Koenig (2011) discusses, resistance is a manifestation of patient agency. Building upon this conceptual understanding, we identified the instances of agency in which patients used both active and passive tactics for enacting resistance to the physician's treatment and/or diagnosis. Using context and Stivers' (2005) definition as a guide, we identified instances of passive resistance (behavior that didn't align with the physician's treatment plan), and several instances of active resistance (behavior that challenged or queried the diagnosis as well as the effectiveness of medication of alternate treatments, p.950).~~

#### \*Access\* differs from \*care\* - we’re the former – we don’t force patients to go to the doctor.

#### The K’s left paternalism – says black patients don’t deserve THE OPTION of coverage because they’ll underestimate how violent care can be.

#### That’s violent– and built on the trope of passive black patients. Reject that:

~~Hudson ‘15~~

~~Dr. Janella Nicole Hudson is now with The Centers for American Indian and Alaska Native Health at The Colorado School of Public Health. Specifically, the author is a postdoctoral fellow in the department of Health Behavior and Outcomes at the Moffitt Cancer Center where Janella contributes to the study of doctor-patient communication with adolescent and young adult cancer patients. The author also serves as the Program Manager for Education and Research at The Academy of Communication in Healthcare. Janella’s research examines health communication processes with diverse medically underserved groups, including black patients, to produce culturally tailored educational interventions. Janella’s research features expertise in Qualitative Social Research, Communication and Media. The methodology for this paper studied a cohort consisting solely of those that identified as black patients. The cohort was predominately “low income” – which the authors define as having an annual income of less than $30,000.00 per year. The cohort was predominately those that identified as “black women”. The paper is a follow-up to a larger principal study by Dr. Louis Penner of Wayne State University. In that parent study, 98.5% of participants identified as black. This paper was written while the author held an MA and was the author’s dissertation paper for obtaining a PhD. "Agency And Resistance Strategies Among Black Primary Care Patients" (2015). Wayne State University Dissertations. Paper 1340. Submitted to the Graduate School of Wayne State University, Detroit, Michigan in partial fulfillment of the requirements for the degree of DOCTOR OF PHILOSOPHY - #CutWithRJ –-~~ [~~http://digitalcommons.wayne.edu/cgi/viewcontent.cgi?article=2339&context=oa\_dissertations~~](http://digitalcommons.wayne.edu/cgi/viewcontent.cgi?article=2339&context=oa_dissertations)

~~Conclusion~~

~~In this project, I sought to understand the nature of agency and resistance among black primary care patients. This investigation interrogated several of the assumptions that guide current contemporary health interventions. Health scholars and their subsequent health interventions have asserted that marginalized patients are generally less active and may require "activation" in order to demonstrate the ideal participatory behaviors during the clinical interaction. This approach fails to consider the complexity of factors that influence the health behaviors and beliefs of marginalized and minority patients. It is therefore crucial for health scholars to understand the interdependent relationship between culture, structure and agency. This approach seeks to establish a starting point of inquiry for this research imperative by exploring the ways in which black primary care patients do enact their agency, and in some cases, resistance, during the clinical encounter. This line of research potentially offers an important contribution to behavioral research as it offers a new perspective for~~ *~~understanding~~* ~~how marginalized patients are already active, and strategic in their enactment of agency. Such an~~ *~~understanding~~* ~~can ultimately provide a cornerstone for accurately identifying and targeting the factors that contribute to health disparities.~~

### Agency impact

#### ( ) Agency’s also an external impact onto itself. Don’t trade it for their irresolvable ontological claims.

**~~Malik ‘2~~**

~~Kenan Malik is a writer and senior visiting fellow at the Department of Political, International, and Policy Studies at the University of Surrey. This paper was presented to the Engelsberg seminar on 'Consciousness, Genetics and Society', Avesta, Sweden, 14 - 16 June 2002 – http://www.kenanmalik.com/papers/engelsberg\_nature.html~~

~~For this and many other reasons, many find implausible the idea that human agency is just an illusion. They therefore adopt a different approach - accepting, in principle, the existence of consciousness and agency, but ignoring them in practice when formulating scientific concepts of human nature. The psychologist Steven Pinker, for instance, points out that moral reasoning, depends upon our acknowledgement of ourselves as sentient beings. The concept of sentience 'underlies our certainty that torture is wrong and that disabling a robot is the destruction of property but disabling a person is murder'. Pinker acknowledges that, as yet, we have no idea how to explain sentience scientifically. But, he argues, 'Our incomprehension of sentience does not impede our understanding of how our mind works.'10 It seems odd to hold that sentience is both central to human thinking and also irrelevant to our understanding of how the mind works. As the neurologist Raymond Tallis points out, to construct a theory of the human mind while ignoring sentience is a bit like 'trying to build a house by starting at the second floor'. Sentience, Tallis observes, 'is the first, not the last, problem of psychology. It is not merely the most difficult of the problems of consciousness or mind; it is also the pivotal one and addressing it cannot be postponed until one has solved the "easier" problems such as those pertaining to... intelligence, memory, thinking etc.'11~~ **~~Consciousness and~~** ~~agency, in other words,~~ **~~are not~~** ~~phenomena~~ **~~tacked on to human nature; they are~~** ~~at the heart of what it is to be human. The relationship between humans as physically determined beings, and humans as conscious agents - between humans as objects and humans as subjects - is one of the most difficult problems for scientists and philosophers~~**~~.~~** ~~While analytically we can talk of humans either as subjects or as objects, in reality humans are simultaneously both subject and object.~~ **~~We have at present~~** ~~no real~~ **~~conceptual framework~~** ~~within which~~ **~~to consider~~** ~~such an~~ **~~ontological peculiarity.~~****~~Denying~~** ~~one or other~~ **~~aspects of our humanness,~~** ~~however~~**~~,~~** ~~is not a way of solving the conundrum. By insisting that humans can be understood in purely naturalistic terms, mechanistic thinkers are in practice forced to give up on the attempt to understand humans as subjective beings, and compelled to view us simply as objects.~~

#### ~~Their frame is wrong, crushes agency, and cynicism wrecks the alt.~~

~~McCarthy 15 – Jesse McCarthy, PhD Candidate in English at Princeton, BA from Amhearst College, Writer for Dissent, The Point, and The Nation, now Professor of English at Harvard University, “Why Does Ta-Nehisi Coates Say Less Than He Knows?”, The Nation, 11-15, https://www.thenation.com/article/why-does-ta-nehisi-coates-say-less-than-he-knows/~~

~~Consider, for example, his use of “the Dream” or “Dreamers” as shorthand for the white suburban pastoral of “perfect houses with nice lawns.” For Coates, “the Dream” is an ideal maintained at the expense of black lives, insofar as those who live in it refuse to acknowledge the institutional racism that has been instrumental in the creation of such ideals and the maintenance of their exclusiv­ity. It’s easy to understand what Coates means by “the Dream,” especially since for a long time it has been transmitted, as he acknowledges, through daytime television. But why indulge this fiction in the first place? The neoliberal financialization of the economy that began with the Reagan Revolution, and that has devastated black neighborhoods and gutted the organized working class across the nation, certainly didn’t spare people of other races and cultures. Why not admit that there are vast stretches of entrenched white poverty (representing nearly 40 percent of all welfare “handouts,” incidentally)? Why not remind people that the dark side of “the Dream” is the ongoing heroin epidemic ravaging predominantly white middle-class families, or the spread of meth across rural lower-class white communities, where lives are being destroyed as well? Why not attack outright the myth of an ideal white community—­which exists nowhere—­instead of using it as a rhetorical crutch?~~

~~Why not attack outright the myth of an ideal white community—­which exists nowhere—­instead of using it as a rhetorical crutch?~~

~~Another crutch is Coates’s evocation of environmental disaster toward the end of the book: “It is the flight from us that sent them sprawling into the subdivided woods. And the methods of transport through these new subdivisions, across the sprawl, is the automobile, the noose around the neck of the earth, and ultimately, the Dreamers themselves.” Using an image of lynching to describe something as abstract as climate change strikes me as contrived, if not inappropriate (and I share Coates’s opinion about the environment and the car). It’s hard to believe this language is addressed to his son; perhaps it’s meant to appeal to readers familiar with Elizabeth Kolbert’s writings on climate change and human extinction. At times, hyperbole leads Coates to throw down bolts that sting where they should, but elsewhere it results in an exhaustion of metaphor.~~

~~What gets obscured by Coates’s metaphoric handles is class; yet there’s no story about race in America that can afford to ignore the realities of class interest. Voting blacks, many of them staunchly middle class, supported Clinton’s “tough on crime” measures in the 1990s. Maryland’s Prince George’s County—which, as Coates points out, has a reputation for police corruption and brutality—is also one of the richest majority-black counties in the nation. That doesn’t make racism a less important factor in the killing of Prince Jones. But is the larger pattern attributed to the PG County police force also in each case a matter of black-on-black racism—or is there a class bias at work as well, with the county’s well-to-do inhabitants sending a message that certain blacks don’t belong in the enclave they’ve carved out for themselves? Coates tells his son that some “theories” of law and order came up “even in the mouths of black people,” but he drops the matter without further explanation. It’s a false choice to pit color against class in determining racial inequality; both are essential to understanding social relations. But by skating over the realities of class politics instead of endeavoring to explain their complexity, one can end up undermining the case for structural racism instead of demonstrating it.~~

~~One of the frustrations of Between the World and Me is that Coates says less than he knows. In his reparations essay, incisive prose demolishes myths and displays the material and moral consequences of political crimes that are hiding in plain sight. I simply do not believe that his readers, black or white, require the cloudy metaphor of “the Dreamers” to grasp his argument, or can’t confront head-on the realities of class antagonism or the pernicious violence of colorism and sexism. If people really are “dreaming,” the way to wake them up can’t be to feed them clichés and narratives in which they have no agency, in which history is largely a catastrophe that has already happened, and all they can do now is watch the ship go down.~~

~~I also take issue with Coates’s repeated suggestion that black folks are at the mercy of forces they will never be able to shape. “The fact of history is that black people have not—probably no people have ever—liberated themselves strictly through their own efforts,” he writes. There’s no question that historical forces are compacted and impossible to disentangle, but this statement is surely uncharitable to Toussaint L’Ouverture and the Haitian Revolution; to the Jamaican Maroons; to the Quilombos in Brazil; to the ANC in South Africa; to Amílcar Cabral in Guinea-Bissau; to Madison Washington’s commandeering of the Creole; to Harriet Tubman, who freed herself and her family and went back for countless others; and to all the individuals and organizations, secular, religious, and militant, that banded together and broke Jim Crow in the American South. But despite this air of dismissal, Coates isn’t a quietist; he’s a pessimist. He believes in struggle while maintaining a paradoxical skepticism about its effectiveness. He tells his son, Samori—named for a military hero who resisted French colonial expansion in West Africa—that he must struggle, “not because it assures you victory, but because it assures you an honorable and sane life.” This is wonderfully put, but I would observe that most black people are already struggling. This summer, concerned parents undertook a hunger strike just to protect a local high school in Chicago. The question is how to empower that struggle, against whom to direct it, with what allies, by what means, and with what vision of society before us?~~

~~There is a real need today for writing that shatters people’s cynicism and perceived impotence, for the grain of truth that brings them back to politics, where so much ground has been ceded. The American prison archipelago is a nimble and ruthless adversary with enormous power. It is an instrument of profit, and the Corrections Corporation of America intends to keep it that way. Taser International, the company that promises to put body cameras on cops, also makes a handsome profit selling the devices to “light up” noncompliant traffic offenders. Coates says in this book that these forces “are the product of democratic will,” what he calls “majoritarian bandits.” This strikes me as implausible. They are the product of complacency and demagoguery and the hollowing out of democratic institutions and our political culture, not its malicious expression. The gutting of the Voting Rights Act was carried out through right-wing judicial activism, subverting the will of both the Senate and the House. The Ku Klux Klan, which originated in the post–Civil War struggle to overthrow the biracial governments of Reconstruction and restore white supremacy in the South, has never been an expression of democratic will, but rather a weapon for suppressing and intimidating democratic power at the ballot. The forces of white supremacy, in league with great wealth, have always feared true democracy, because they know they are outnumbered.~~

~~Coates writes at one point that “‘White America’ is a syndicate arrayed to protect its exclusive power to dominate and control our bodies.” But doesn’t this mistake the symptom for the cause? It would be more true to say that “White America” is a syndicate arrayed to protect powerful oligarchic profit, and that it has always been able and eager to do so by exploiting anti-black racism to harvest the enormous benefits of a labor force stripped of human rights and dignity. If you believe that “White America” really is dedicated to white power for its own sake, that it seeks the domination of black bodies almost as a blood sport, then how can you even begin to dismantle such a massive structure of evil? If this vision is true, then Coates’s pessimism is indeed justified. But what if it is instead the case that white supremacy is merely a servant—as well as the original grease of laissez-faire capitalism, an arrangement of political economy in which everything is up for sale, including human beings, and which at the inception of the modern European world provided the mercantilists with the international market’s original “liquidity”? If you recognize this—that we are still bound to the illusion that it’s reasonable to live as if everything can be bought and sold, with the profits producing their own justification and all human and environmental costs relegated, at best, to an afterthought—then you can also identify an all-too-human structure of interest that can be actively fought and denounced for its abuses, greed, and fraudulent promises.~~

#### ~~Merely propagating ideas without a strategy for actualizing them crowds out striving to influence the balance of interests for people in power which is the only way to change the process of racialization.~~

~~Naomi~~ **~~Zack 17~~**~~. Professor of Philosophy at the University of Oregon. 02/2017. “Ideal, Nonideal, and Empirical Theories of Social Justice: The Need for Applicative Justice in Addressing Injustice.” The Oxford Handbook of Philosophy and Race, Oxford University Press.~~

~~Ideals of justice may do little toward the correction of injustice in real life. The influence of John Rawls’s A Theory of Justice has led some philosophers of race to focus on “nonideal theory” as a way to bring conditions in unjust societies closer to conditions of justice described by ideal theory. However, a more direct approach to injustice may be needed to address unfair public policy and existing conditions for minorities in racist societies. Applicative justice describes the applications of principles of justice that are now “good enough” for whites to nonwhites (based on prior comparisons of how whites and nonwhites are treated). Social information just dribbles in, bit by bit, and we simply get used to it. A single story about a person really hits home at once, but the grinding injustices of daily life are endured. It is easy to ignore them and we do. Judith Shklar, The Faces of Injustice (Shklar 1990, 110) IDEAL theory about justice extends from Plato’s Republic to John Rawls’s A Theory of Justice, including many careers devoted to analyses and criticism about such texts in political philosophy. Rawls offers a picture of the basic institutional structures of a just society, on the premise that in order to correct injustice, we must first know what justice is. According to Rawls, while “partial compliance theory” studies the principles that govern how we are to deal with injustice, full compliance theory, or ideal theory, studies the institutional principles of justice in a stable society where citizens obey the law. Rawls began A Theory of Justice with the claim: “The reason for beginning with ideal theory is that it provides, I believe, the only basis for the systematic grasp of these more pressing problems” (Rawls 1971, 8). Rawls’s ideal theory is too abstract to correct injustice or provide justice for victims of injustice in reality, because it is based on a thought experiment and the assumption of a “well-ordered” society in which there already is compliance with law (Zack 2016, 1–64). What people care about in reality concerning justice is not what ideal justice is or would be, but how immediate injustice can be corrected. Injustice is always specific in concrete events that are recognizable as certain types, for example, theft, murder, or police racial profiling. Injustice can be corrected by punishing those responsible for it in specific cases and instituting social changes that prevent or reduce future occurrences of the same type. Rawlsian nonideal theories of justice, constructed for societies where people do not comply with just laws, rely on ideal theory as a standard for just institutional structures. The main question driving nonideal theory is how to construct a model or picture of justice that will result in the future correction or avoidance of present injustices. John Simmons quotes John Rawls from Law of Peoples, on this matter. Nonideal theory asks how this long-term goal might be achieved, or worked toward, usually in gradual steps. It looks for courses of action that are morally permissible and politically possible as well as likely to be effective [LOP p. 89]. (Simmons 2010, 7) However, injured or indignant parties may not care about the long-term goal of justice that could lead to balance or compensation for their situations. Not only are what P. F. Strawson (1962) called “reactive attitudes,” such as moral indignation, blame, and a desire for deserved punishment, strong in their focus on injustice, but the best theory of justice in the world does not tell us what to do about the injustices we are faced with in the here and now, especially “the more pressing problems” of race-related injustices. Such questions cannot be answered with reference to ideal theory or some application of ideal or nonideal theory to their concrete situations, because the a priori nature of both of these does not provide a fit with specific contingencies—ideal and nonideal theories do not generate practical bridge principles. As theories, they posit ideal entities, but without the apparatus of scientific theories which provides connections to observable entities or events. (Moulines 1985). The correction of injustice or injustice theory requires a philosophical foundation for itself. Models of justice have often been naïvely utopian throughout the history of philosophy, because they are based on an assumption of automatic total compliance, as though the right words or pictures by themselves have the power to transform reality, or as though agreement with those right words or pictures will automatically result in action that will automatically make the world instantiate those words or pictures. When they are not fantastically and ineffectively utopian in this way, such models have been used to justify the already-existing dominance of some groups over others. (A prime example is John Locke’s Second Treatise of Government, written decades before 1688 Glorious Revolution, to express the interests of the new rising class of landed gentry, which were eventually fulfilled by a Protestant king on the throne and a strong representative parliament after that revolution [Laslett 1988].) Models of justice have legitimately served to inspire law in modern societies with government constitutions and national and local law. But, sometimes, as in US founding documents, although universal and absolute justice is proclaimed, subsequent events make it clear that this language was intended to legitimize just treatment for members of selected groups only, that is, white male property owners, at first. As a result of just law and its selective application, over time, there comes to be justice for an expanding group, but still not everyone in society. However, what is written, together with descriptions of real justice for some, can be a powerful lever for obtaining justice for at least some of the excluded. To understand how that works, it is necessary to develop an approach to justice that begins with injustice, in real situations where there is already some degree of justice in a larger whole. The extension of existing practices of justice to members of new groups is applicative justice, a concept with substantial historical and intellectual precedent, although not by that name. In what follows, more will be said about the idea of applicative justice and then its history will be considered. Voting rights and housing rights are examples of candidates for applicative justice in our time. Finally, content in the form of narrative may be motivational for social change. The Idea of Applicative Justice Applicative justice is an approach to justice with the goal of making the unjust treatment of some comparable to those who already receive just treatment. Applicative justice takes a comparative approach, for example, comparing how young black males are treated by police officers in contemporary US society, to how young white males are treated (Jones 2013; Zack 2013, 2015). Applicative justice rests on a pragmatic approach to social ills, which includes the premise, based on Arthur Bentley’s 1908 insights in The Process of Government, that government is much more than the apparatus of state and written laws and court decisions. Government is an extended, dynamic process, an ongoing contention among interest groups in society. This full-bodied, empirical and pragmatic view of government process entails, for example, that we consider as parts of the same political mix/phenomenon/raw material all of the foregoing: the Fourth and Fourteenth Amendments, the 1960s Civil Rights Legislation, doctrines of probable cause, the disproportionate incarceration of African Americans, racial profiling, and police homicide with impunity. Thus, Rawls’s insistence that “the rights secured by justice are not subject to political bargaining or to the calculus of social interests” (Rawls 1971, 4), should be understood as “the rights secured by justice should not be subject to political bargaining or to the calculus of social interests.” In reality, “the rights secured by justice” are constantly subject to political bargaining and the living calculus of social interests. One consequence of this empirical perspective is that moral outrage, critiques of white supremacy, or analyses of white privilege, along with other forms of blame, cannot be assumed to have the power to change anything, by themselves. By contrast, changing relationships between police officers and their local communities, or changing the rules of engagement when police stop or attempt to stop suspects, might on this view have some causal power (Ayres and Markovits 2014). It is important to realize that such changes in practice would not be specific applications of a theory of justice, but ways of changing social reality into a different political mix. However, a better theory of justice, even a more racially egalitarian one and even a theory of applicative justice that was widely accepted, would still be no more than a change in what Bentley calls “political content.” Any theory of justice or any set of just laws is compatible with widespread racially unequal and unjust practice. And the converse also holds. Unjust laws or laws with gaps for unjust practice are compatible with just practice. Thus, applicative justice is pragmatic in taking the whole political mix/ phenomenon/raw material as its subject for a specific injustice. Unlike ideal or nonideal justice theory, the applicative justice approach brooks little faith that reality can be changed by a special conceptual space or mode of critical moral discourse that is undertaken apart from reality. Reality cannot be changed by normative pronouncements, by or on behalf of the oppressed, but only by shifts in existing interests of groups of real people. To base hopes for change on normative content alone may paralyze [eliminate] the means for taking action that could result in change, because such content proceeds as though matters of justice were only matters of argument. Those who have opposed social racial justice have understood this well enough, because instead of mainly arguing against new just law over the twentieth century, they have taken action to block progress. Race and Justice Consideration of race and injustice together, within political philosophy, focuses on the need for specific groups to not be treated unjustly. For a group to be treated justly, a large number of its members need to be treated justly. But for a group to be treated unjustly, it is sufficient if a smaller number or lower proportion than required to meet the standard of just treatment be treated unjustly. One reason for this asymmetry is that just treatment is easily normalized within communities, whereas unjust treatment of only a few is disruptive and considered abnormal among other members of the group to which victims belong (although not necessarily by members of groups who are generally treated justly). The unjust treatment of a small number ripples from their friends and relations to other members of the same group, who realize that they are subject to similar unjust treatment from their membership in that group alone. More broadly, if the group treated justly and the group treated unjustly belong to the same larger collective, such as whites and blacks in the United States, then the unjust treatment of even a very small number of that total collective of residents or citizens should be disruptive to the whole collective, given promulgated principles of “justice for all.” But that does not always happen, at least not in ways that result in real change. Apathy and self-absorption of those not treated unjustly is part of the reason, although another significant part is that the group treated justly already knows that the national collective rhetoric of justice is intended to apply primarily to them. It is that kind of disparate treatment, which does not disrupt everyone, even though it should, which calls for a theory of applicative justice, on the abstract level where people call for justice. But applicative justice is not only an abstract theory. Applicative justice requires comparisons of group treatment. If minorities are treated unjustly, a description of that injustice does not require an ideal or nonideal theory or model of justice, but simply a comparison with how the majority is treated. (The term “minorities” refers to those disadvantaged or oppressed, because sometimes minorities are greater in number than “majorities,” e.g., blacks under apartheid in South Africa, American slaves in some Southern states, or black Americans in some twenty-first-century cities.) The principles and mechanics of justice that work well enough for most white Americans need to be applied to nonwhite Americans. For rhetorical purposes, it might be evocative to talk about black lives or black rights, but strictly speaking the subject is a racial framework that is color-blind in an important part of law—constitutional amendments and federal legislation—but not in reality. This gap between written law and social reality can be viewed as hypocrisy, racial bias, or white supremacy, only if one assumes that written law is an accurate description of, or blueprint for, social reality. But a perspective that takes in the whole process of government reveals that the gap and what is permissible within it, are parts of the same whole process. The contrast between blueprints and maps is important to consider. Political philosophers often proceed as though their writings about justice are blueprints, when they should instead begin by constructing maps. Present politics or a political party in power may present obstacles and challenges to applicative justice in any specific case. Those who aim for applicative justice must struggle against such obstacles and challenges, as well as the ignorance, prejudice, and ill will of large parts of voting publics under democratic government, and in addition, media misrepresentations, business interests in a status quo, and lack of understanding of oppression by those who are treated unjustly. For example, the injustice in the disproportionately large number of African Americans in the US criminal justice system has been supported by law-and-order politics, the War on Drugs, belief in racial gender myths (e.g., the larger-than-life black rapist), explicit racism, media sensationalism of crime committed by black men, profits made by for-profit prison corporations, and embrace of self-destructive subcultures by some black men who become incarcerated. At the same time, as an efficient cause or precipitating factor, ongoing racial profiling by police helps feed the system with new suspects, about 90 percent of whom plead guilty in preference to the risks and costs of a trial (Kerby 2013; Rakoff et al. 2014). Intergenerational poverty, unemployment, and undereducation contain people within this system, and the high rates of nonwhites in the prison population are used as official justification for racial profiling (Zack 2015, chap 2). Thus, the complexity of causes and background factors associated with the disproportionate number of African American male prison inmates can be understood through a number of approaches. The normative approach of applicative justice would be to address those causes or factors, distinctly and individually, through specific changes in concrete practice, as well as changes in law, as relevant.~~

### 1ARCase

### Adv. 1

The neg had absolutely 0 cards talking about syn bio…. And how to mitigate syn bio…

Synthetically-produced diseases already exist – a lab accident coming within 10 years and millions of people will die. That impacts outweighs – it access both teams frameworks because the impact would disparately impact communities lacking privilege.

The Alt – even if it functioned perfectly to end the State – would have no apparatus to stop these lab releases.

Narrowly and contingently retaining government is the LONE viable path. It wouldn’t re-create all the USFG writ-large – it would simply regulate these labs AND to promote counter-research to check their inevitable release.

Extend Rosch 12- “Parker immunity” doesn’t account for spillovers, forced citizens of one state to absorb costs imposed by another

State’s rights are not “categorically good” but we must account for out of state externalities- limiting parker is key, parker immunity counters system of federalism, nat gov must regulate, extend Sack 21 against their McCammon 21… the aff never said state rights r good. However, we must account for externalities. The aff’s plan text uses the “USFG” to limit the doctrine… this card doesn’t mean much

Extend Adler 12- create “race to the top”, states cannot externalize costs – competition can discover which policies are effective

McGinnis 11- decentralization has value for learning, accelerates tech – data from state regulatory experiments reaps benefits and avoids downsides – Wilson 13 says virsus already sits in labs and cannot be avoided, millions killed- need positive regulatory schemes … this addresses their smith card… we talk about vriuses beyond just mask wearing, we talk about how to avoid those deaths… not counter a pandemic as it is happening

### Adv. 2

#### Practitioner Shortages:

Extend McMichael’20- FTC challenges State Level “Scope of Practice” restrictions on Nurse Practitioners – but they can’t because of Parker immunity, increased use of NPs reduce intensive procedures and price - restrictive “scope of practice laws” reduce this – extend LDI’20 – scope of practice restrictions hamper patient health – NPS have to jump through hoops to provide basic care

Extend Chung 20- Solvency Empirical Impact is significant, relaxing Sop restrictions has saved so many lives per day per state (Covid- reduced by 10 cases per day)

#### The Aff can solve.

Extend Schotten’15 health access distinct from modes of violent power – claiming “liberalism” is false equivalencies – generates support for ACA rollback – state action interpreted as alarmist fantasy, - Gee’20 elements of squo echo this call for an untouched market- place millions of lives at risk

Extend Parento’12 – gov policy better than de facto Alt of an untouched market…there are strong reasons that support government actions, legal mechanisms most effective way of reducing health disparities – w/o disparities will widen

## T

## Topicality

#### ( ) This is not a Topicality arg – it’s a vagueness arg, we can interpret the arg while also answering the arg its vagueness .

That’s meaningful – because all their reasons to vote neg draw upon being “not topical” – but we are as specific as the wording in the resolution.

#### ( ) We meet– the USFG is a specific-enough of an actor.

It provides ample ground for disads related to anti-trust policy – or trade disads that contrast the USFG relative to other nations. This is literally our we meet arg they say we dropped we didn’t drop it

#### ( ) Reasons to Prefer

Their interp infinitely regress – justifying Senator-specification, which comes-with new PIC’s that crush topic education and center the round on actors, instead of actions. This is the counterinterp

It also avoids situations where the Aff strategically over-specifies in order to dodge disad links – like using some tiny subsection of the FTC.

#### ( ) Normal means and Disad checks – the Neg can just read a card about how the plan would play out. That applies to both the “Core Antitrust” and “Agent” vagueness threads

#### ( ) We meet the other vagueness violation

Parker immunity grants immunity from each of the three Core Antitrust Laws – that’s how exemptions function.

#### ( ) There’s no obligation to specify beyond the terms of the resolution.

Any other standard is contrived and designed boost Neg strategy at the expense of topic-education.

#### ( ) Contradiction

Their desire for specificity is much greater for the aff plan than it is for the Neg Alt – which is totally vague on questions of actors and implemtnation. Answers effect topicality

#### ( ) Not a voting issue

At best, this is simply a reason to allow the Neg to have a link to specific agencis or Core antitrust PIC’s.

#### A way a immunity works in a legal sense is that it creates a new standard that exempts you from anti trust laws

#### When you apply for an immunity it cuts across all antitrust laws, we lift that exemption so they are prone to any of the three, we are a very fair aff because we just end parker immunity for a bunch of stuff

#### Vagueness is good it prevents two bad things- we don’t have to be specific past the resolution we meet the resolution- they are asking us to do their debate for them and it unfair to the aff and ruins their own neg ground- we aren’t shifty- all affs don’t specify that deeply- they are worse for debate because they just want us to give up before we debate so that they can just hit us with DAs and CPs that solve everything. Debate isn’t about winning its about learning and they can’t learn if we are that specific

#### 1. Its a spiraling infinite regress, move the debate away from antitrust and instead debating specification, neg is not asking out of altruism, they are asking to skirt topic knowledge

#### 2. It helps the negative- with a high level of detail we would choose an agent that removes neg ground

#### The amount of detail that we have given them about our aff is in depth- they have not given us the same amount of detail for their alt

#### We have to live in a world where not all detail is there and we don’t get trapped in a debate about detail and actually debate the topic \

#### Said in 2AC

#### We meet: Prohibitions significantly hamper business-as-usual --- neg definition is too narrow to have real world application

Ward 21 –

#### Judge this is unfair on the aff, we are topical and had answers to their T arg as well as the vagueness arg that they gave, this is not a voting issue and we are obviously topical if they have run a link to the K and saying that we can’t perm

## K

### Framing points

#### ( ) Zero link to their Health Care K’s

\*Access\* differs from \*care\* - we’re the former – and don’t force patients to go to the doctor.

We aren’t the old National Health topic. The Aff simply gives a deeper menu of options.

Their skeptical K inverts the error – it reaches a deeply personal conclusion on behalf of every possible patient. That denies patient agency.

#### It’s not solely defense

Their K is problematic – the logic extension would over-correct and push all people lacking socio-economic privilege away from treatment writ-large.

The better mid-ground is to place faith in patient agency – not pushing away from needed medical treatments altogether, but maximizing options for the patient to consider. Patients will navigate away from wretched or violent medical advice.

#### ( ) Perm solves

#### We can certainly lift SOP restrictions and endorse whatever alternate modes of health that’s endorsed by the K. At no point did the Aff commit Nurse Practitioners to engaging in the kinds of health care examples the Neg’s critiquing.

#### ( ) We’re the opposite of their link

#### 1AC McMichael proves local elites and the AMA steer towards “physician-only” models. NPs can augment conventional medical models with greater nuance and cultural appreciation.

Heath 20

## **WE CAN PERM, its testing competition, not intrinsic, turns their disads on the K, cross ex binding Answer to their Women are excluded from research our Hudson ev was tested- our ev is not anti women or anti People of color- cross apply this to the second adv as well because our evidence is looking at health care through a feminist lens that includes underprivileged people- we are doing their Kritik already meaning that they don’t turn our case and we are making health care better- our evidence is data and statistics that is what their Kritik says we are not doing- our aff does that**

### All participants in the Study were Black, “female”, and low-income

#### All participants of the study identified as black and low-income.

Hudson ‘15

Dr. Janella Nicole Hudson is now with The Centers for American Indian and Alaska Native Health at The Colorado School of Public Health. Specifically, the author is a postdoctoral fellow in the department of Health Behavior and Outcomes at the Moffitt Cancer Center where Janella contributes to the study of doctor-patient communication with adolescent and young adult cancer patients. The author also serves as the Program Manager for Education and Research at The Academy of Communication in Healthcare. Janella’s research examines health communication processes with diverse medically underserved groups, including black patients, to produce culturally tailored educational interventions. Janella’s research features expertise in Qualitative Social Research, Communication and Media. The methodology for this paper studied a cohort consisting solely of those that identified as black patients. The cohort was predominately “low income” – which the authors define as having an annual income of less than $30,000.00 per year. The cohort was predominately those that identified as “black women”. The paper is a follow-up to a larger principal study by Dr. Louis Penner of Wayne State University. In that parent study, 98.5% of participants identified as black. This paper was written while the author held an MA and was the author’s dissertation paper for obtaining a PhD. "Agency And Resistance Strategies Among Black Primary Care Patients" (2015). Wayne State University Dissertations. Paper 1340. Submitted to the Graduate School of Wayne State University, Detroit, Michigan in partial fulfillment of the requirements for the degree of DOCTOR OF PHILOSOPHY - #CutWithRJ - <http://digitalcommons.wayne.edu/cgi/viewcontent.cgi?article=2339&context=oa_dissertations>

Primary Study Participants. The participants of the primary study were patients who visited the clinic, as well as the residents who treated them. The primary study successfully recruited 112 low-income, self-identified black patients with an average age of 42.83 (sd =2.45). The racial composition of the participants closely matched the demographics of the surrounding neighborhood.

## Condo arg:

### Neg Condo Bad

Condo is bad because

their neg flex… perms and args r too diff things.. running with everything and using what sticks isn’t good

test compeititon… we have the ability to perm but just as u mentioned u can throw whatever you want at us

not a time suck – we never said a tiem suck.. we r talking about args

not a moving target… very much the opposite

education args because in-round abuse…

### Aff reduces Health Disparities

#### Restrictive scope of practice laws restrict NPs working to address health disparities in underserved populations – holistic approach and trust make NPs uniquely situated – no answer from the neg

Heath 20

### Agency disad – 2AC

#### Agency disad vs. the K – we can win on this alone.

#### Extend 1AC Hudson – Medicine used to be the site of power imbalances. That’s dated, patients are NOT passive consumer. They single-out bigoted doctors and highlight them to their communities. Power dynamics are increasingly inverted.

#### This is MORE THAN DEFENSIVE.

#### Their K’s denies *the option* of health access. That hurts agency and advances the violently essentialized trope of the passive black patient.

Hudson ‘15

## K- agency disad impact

#### ( ) Agency’s also an external impact onto itself. Don’t trade it for their irresolvable ontological claims.

**Malik ‘2**

Kenan Malik is a writer and senior visiting fellow at the Department of Political, International, and Policy Studies at the University of Surrey. This paper was presented to the Engelsberg seminar on 'Consciousness, Genetics and Society', Avesta, Sweden, 14 - 16 June 2002 – http://www.kenanmalik.com/papers/engelsberg\_nature.html

For this and many other reasons, many find implausible the idea that human agency is just an illusion. They therefore adopt a different approach - accepting, in principle, the existence of consciousness and agency, but ignoring them in practice when formulating scientific concepts of human nature. The psychologist Steven Pinker, for instance, points out that moral reasoning, depends upon our acknowledgement of ourselves as sentient beings. The concept of sentience 'underlies our certainty that torture is wrong and that disabling a robot is the destruction of property but disabling a person is murder'. Pinker acknowledges that, as yet, we have no idea how to explain sentience scientifically. But, he argues, 'Our incomprehension of sentience does not impede our understanding of how our mind works.'10 It seems odd to hold that sentience is both central to human thinking and also irrelevant to our understanding of how the mind works. As the neurologist Raymond Tallis points out, to construct a theory of the human mind while ignoring sentience is a bit like 'trying to build a house by starting at the second floor'. Sentience, Tallis observes, 'is the first, not the last, problem of psychology. It is not merely the most difficult of the problems of consciousness or mind; it is also the pivotal one and addressing it cannot be postponed until one has solved the "easier" problems such as those pertaining to... intelligence, memory, thinking etc.'11 **Consciousness and** agency, in other words, **are not** phenomena **tacked on to human nature; they are** at the heart of what it is to be human. The relationship between humans as physically determined beings, and humans as conscious agents - between humans as objects and humans as subjects - is one of the most difficult problems for scientists and philosophers**.** While analytically we can talk of humans either as subjects or as objects, in reality humans are simultaneously both subject and object. **We have at present** no real **conceptual framework** within which **to consider** such an **ontological peculiarity.** **Denying** one or other **aspects of our humanness,** however**,** is not a way of solving the conundrum. By insisting that humans can be understood in purely naturalistic terms, mechanistic thinkers are in practice forced to give up on the attempt to understand humans as subjective beings, and compelled to view us simply as objects.