# Neg vs. Fullerton GW- ADA Nationals Rd 2

# Neg Vs New K Aff

## T 1NC

#### The text of the resolution calls for debate on hypothetical government action – they don’t meet

Ericson 03 (Jon M., Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., The Debater’s Guide, Third Edition, p. 4)

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

**Horton 18**—(Professor of Law and Heidepriem Trial Advocacy Fellow, University of South Dakota School of Law), Horton, Thomas J. 3/20/18. University of New Hampshire Law Review. “Rediscovering Antitrust’s Lost Values,” 65.

When Congress passed such **core antitrust legislation** as the **Sherman Act** in 1890, and the **Clayton and FTC Acts** in 1914, it was fully cognizant of and wished to push forward the broad social, political, moral, and economic currents favoring equality of opportunity, fair and ethical competition, and the fear of concentrated power—both political and economic. These core American values predated the American Revolution, and sparked the Boston Tea Party on December 16, 1773—a revolt against the British East India Company’s efforts to monopolize the colonial tea trade. 233

#### Vote neg – the aff is not a governmental expansion of core antitrust laws

#### Our impact is debatability:

#### Limits – A bounded topic serves as a preset stasis point for debate than ensure thematic coherence. A limitless topic destroys debate’s competitive incentives – guaranteeing a race to the margin distorting topic research

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

**The terms of the resolution create a language that offers a rubric for evaluating arguments under a deliberative framework. Discussions outside stasis are a rhetorical tactic straight out of Trump’s pocket—making the topic into a first-order question sidesteps deliberative testing, which breeds dogmatic group polarization and trades argumentation for power**

**Aikin and Talisse 17**—Assistant Professor of Philosophy AND W. Alton Jones Professor of Philosophy, Professor of Political Science, and Chair of the Philosophy Department at Vanderbilt University (Scott and Robert, “Democracy, Deliberation, And The Owl Of Minerva Problem,” The Critique, January/February 2017, dml)

To see this, consider that so many features of democratic political life **depend for their intelligibility** on the aspirations of **good argumentative culture**. News is no longer simply read, but is presented in a format of pro-and-con panel debate; journalists ask questions about reasons politicians have for policies, and test politicians’ views for internal consistency; public debates are organized prior to elections. These are all in the service of **realizing a deliberative democracy**, a mode of democratic politics where public argument is a (perhaps the) **central** civic activity. Note further that the deliberativist aspiration drives our criticism of what are generally taken to be democratically degenerative forms of political communication. Bias, spin, derp, lying, flip-flopping, glad-handing, and all the rest could hardly be regarded as deserving of political criticism **except against the backdrop** of the **ideals of deliberative democracy**. These terms would not be accusatory were it not presumed that democratic citizens are committed to a politics of **epistemically sound public argumentation**.

Though the deliberativist aspiration is widespread, and arguably constitutive of contemporary democracy, it remains an aspiration. As we all know, public argumentation among democratic citizens is at best a mixed bag. Attempts to deliberativize democracy are **fraught with hazards**. For one thing, democratic citizens tend to discuss politics **mainly with like-minded others**. This occasions the difficulties associated with the phenomenon known as **group polarization**: as like-minded people speak to each other about their shared views, their positions shift towards **more extreme versions**. Put otherwise, under conditions of doxastic homogeneity, deliberation produces extremism. And as one’s views progress towards extremity, one grows **increasingly unable** to countenance the possibility of **reasoned**, **informed**, and **sincere disagreement**. That is, group polarization feeds what Julian Sanchez has described as **epistemic closure**, the incapacity to see views that run counter to one’s own as **even intelligible**. And as one’s views become epistemically closed, one will increasingly find one’s critics to be **incompetent**, **insincere**, **dishonest**, and **ignorant**. Their points will appear as mere noise or petulant emoting. Eventually, one will see fit to simply stop listening to those who espouse opposing views. As a result, there will be progressive **all-around marginalization** of **unorthodox**, **unpopular**, and **unfamiliar political views**. Those already least likely to get a hearing will be increasingly regarded as incapable of intelligible speech. Accordingly, the deliberativists’ central democratic mechanism seems to undermine democracy.

Of course, these difficulties become only more pronounced once it is noticed that public political deliberation is of necessity largely mediated by various modern communicative technologies. No deliberative democrat explicitly calls strictly for face-to-face discussions among citizens; public deliberation must be facilitated by intermediary institutions, such as social media, television news channels, websites, and online forums of many other kinds. Despite the fact that these communication platforms all offer the potential for robust argumentative exchange among citizens who may be geographically and politically distant from one another, in practice, they tend to exacerbate the vices outlined above. A casual survey of the comments thread of nearly any news site will show that polarization, closure, and marginalization are the norm. Well-run argument is beyond scarce on the internet.

The owl of Minerva flies only at dusk. Only after we have identified these pathologies and suffered their consequences can we think about how to mitigate them. There are many fixes on offer among theorists of democracy. Some argue in favor of new and demanding civic duties that require citizens to read widely across the political spectrum. Others propose institutional interventions, ranging from the enactment of “equal time” laws for news outlets and websites, to the creation of a new national holiday devoted to professionally-orchestrated public deliberation events. Empirically-minded theorists of deliberative democracy are working vigilantly on these matters. It is safe to say that there is no easy way to inoculate deliberative democracy against these pathologies. But even if there were, we worry that another, even more foreboding difficulty lurks. There is reason to think that public argument itself, even when institutional distortions do not pervert it, yields its own pathologies.

Consider the following. Some arguments fail because they run on false premises. Other arguments fail because they draw an **obviously unwarranted conclusion** from their premises, much in the manner in which a magician pulls a rabbit out of his hat. In such cases, it isn’t difficult to see that something has gone awry. But some cases of the latter kind of failure aren’t so obviously failures. These are cases of **fallacious argument**. Fallacies are arguments that we tend to regard as good, but in fact are not. We have to **work** to **see them as failures**, and developing the ability to see them as failures requires us to craft concepts with which to diagnose the ways in which they go wrong. This calls us to **theorize arguments**. The task is notoriously difficult, as the proliferation of textbooks and college courses on Critical Thinking suggests. One trouble is that the variety of seemingly good (but in fact bad) arguments is considerably wider than the variety of diagnostic names we have for them. Moreover, this variety is itself **continually moving** and **growing**. Our apparently endlessly creative linguistic capacities occasions a similarly capacious field for the creation of new forms of fallacious argumentation. As a consequence, it is often **only in retrospect** — **after the debates are over**, **votes are cast**, and **decisions are made** — that the illusions can be **revealed for what they are**. And with the proliferation of communication outlets and argumentative forums, argumentation theory can hardly keep up.

One reason why our theories have a hard time keeping up is that our best models of argument take them centrally to be **dialogues**, between **two** people or parties, who **exchange reasons**, each with the purpose of **changing the other’s mind**. But this dyadic (two-sided) model is **no longer fitting**. It leaves out of its purview the fact that argumentative dialogues, especially when occurring by means of modern technological mediation, are performed largely for the sake of onlooking **audiences**. The two discussants may reply to each other, but their objective is actually to **move the audience**. Once we see this **triadic** (three-sided) structure to political argumentation, many otherwise strange phenomena start to **make sense**.

Consider the textbook straw man fallacy. In the case of the straw man, one takes one’s opponent’s view and restates it in a form that is more easily criticizable. One then goes after the new (and worse) version of the view with justly critical lines about it. And then one closes the discussion. For sure, this would not convince the opponent, as they would only say that this criticized version of the view is not their own. But a straw man argument can move an onlooking audience, those who may not be familiar with the issue under debate, who may not be particularly sympathetic with one side, or who may just be looking for a moment of easy clarity with the issue. The straw man strategy gives them what they are looking for.

Consider, further, that much of the textbook vocabulary concerning fallacies has made it into the vernacular. One of particular note is that of the ad hominem, the fallacy of inferring that someone is wrong from the fact that they exhibit some irrelevant personal vice. It is common to find in popular political discourse charges of the ad hominem. To be sure, the prohibitions on name-calling and insulting an interlocutor’s person in the midst of a debate is very old; but now that we have a name for the prohibited strategy, we have a critical tool to invoke in the midst of argument. That the vocabulary of “ad hominem” and “straw man” has entered the political vernacular means that public arguers have additional means with which to sort the good reasons from the bad.

But notice that when the argumentative strategy of invoking a fallacy name is used, it occurs as yet one more move in the developing argumentative exchange. One invokes the straw man or the ad hominem as a way of criticizing one’s interlocutor. So, when Donald **Trump** was criticized in the Republican Primary debates for his use of the ad hominem, he interpreted the criticism simply as **more naysaying** to contend with in the argument; he did not take the criticism to be **targeting his style of engagement**. Three specific examples are of note. The first is when Senator Rand Paul (R-KY) chastised Trump for insulting people for their looks. Trump responded, “I have never attacked Rand Paul on his looks . . . . And believe me, there’s plenty of subject matter there”. The second is when Senator Ted Cruz (R-TX) impersonated Trump to open the Iowa debates (Trump was absent). Cruz began: “Let me say that I’m a maniac, and everyone on this stage is stupid, fat, and ugly. And Ben (Carson), you’re a terrible surgeon . . . . And now that we’ve got the Donald Trump portion out of the way . . . . ”. Third and finally, at the very late Texas primary debate, Trump acknowledged the effects his attacks on others, and noted, “So far, I cannot believe how civil it’s been up here”.

What is troubling here is that in these moments the vocabulary for criticizing the mode of argumentation has become **merely one more tactic** in the argument, one more way to discredit another’s views. The **whole point** of developing the diagnostic language of fallacies is to create a vocabulary with which we can **argue about the argument itself**, rather than the **first-order claims** at issue within it. In particular, the Cruz moment is important, because, in accusing Trump of relying on the ad hominem, Cruz is himself attacking Trump, the person. That is, the impersonation of Trump’s ad hominem is itself a form of ad hominem. And so, instead of being a tool for evaluating the mode of the debate, the fallacy-charge falls back into the debate itself; it becomes yet one more tactic internal to the dispute. Trump obviously sees this point very clearly, as he plays with insulting (by not insulting) Rand Paul, and goes out of his way to acknowledge and congratulate himself that he (and the others) haven’t been name-calling in the Texas debate.

We argue in our natural languages, and so often when we argue, we argue over economies, animals, environments, poverty, and so on. But arguments are **structured collections of statements** that are alleged to manifest certain kinds of logical relations; consequently, they, too, can be the subject of scrutiny and disagreement. And often in order to evaluate a claim about, say, poverty, we need to attend specifically to the argument alleged to support it. In order to discuss arguments, as arguments, we must develop a language about the argumentative use of language. That is, we must develop a **metalanguage**. The objective in developing a metalanguage about argument is to enable us to talk about a given argument’s quality **without taking a side in the debate** over the truth of its conclusion. Accordingly, with the metalanguage in place, we can assess the quality of a given argument **without reference to our own view** of the matter under dispute. Among other things, the metalanguage enables us to **criticize the arguments offered** by people with whom we agree, and it similarly allows us to recognize that sometimes **a powerful argument can be produced** for a conclusion that we know is false. But perhaps most importantly, the metalanguage enables certain **crucial self-critical assessments**; it is by means of the metalanguage that we can **assess our arguments as lacking** without thereby adopting a skeptical stance with regard to our own first-order positions. Put more simply, it is by means of the metalanguage about argument that we can **stand above the fray of our first-order disputes**, as it were, and ascend to a relatively impartial plane from which to assess not the matter under dispute, but the dispute itself. One might say that rationality itself depends upon our ability to competently wield a metalanguage about reasoning, debate, and argument.

The problem is that when the concepts of the metalanguage are **used as first-order tools** in an ongoing argument, the impartiality of the metalanguage is **dissolved**. And so **with Trump**, the language of fallacies became for all involved in the debates yet **one more competing view** about which to wrangle. The metalanguage for assessing the mode of dispute was **dragged into the dispute itself**, and, predictably, the rationality of the exchanges **dissolved precipitously**.

The owl of Minerva flies only at dusk. **Only after** the day is done, after the argument is over, are the tools of wisdom available. The tools of argument assessment, when applied **in the midst of the argument**, are **mistaken for**, or are **appropriated as**, yet more **first-order claims**. They are **entered into the breach**, and so **can no longer assess it**. Subsequent debate **flies free** of **evaluative** and rational **constraints**. And what passes for argument then is **mere power**.

**Analogies between limits and violent exclusion are faulty—argumentative exclusion is inevitable, but topicality ensures it occurs around reciprocal lines.**

**Anderson 06**—Andrew W. Mellon Professor of Humanities and English at Brown University (Amanda, “Reply to My Critic(s),” Criticism, Vol. 48, No. 2, 281-290, dml) \*edits denoted in brackets []

My recent book, The Way We Argue Now, has in a sense two theses. In the first place, the book makes the case for the importance of debate and argument to any vital democratic or pluralistic intellectual culture. This is in many ways an unexceptional position, but the premise of the book is that the claims of reasoned argument are often **trumped**, within the current intellectual terrain, by appeals to cultural **identity** and what I gather more broadly under the rubric of **ethos**, which includes cultural identity but also forms of ethical piety and charismatic authority. In promoting argument as a universal practice keyed to a human capacity for communicative reason, my book is a **critique** of relativism and identity politics, or the notion that forms of cultural authenticity or group identity have a certain **unquestioned legitimacy**, one that **cannot** or **should not** be subjected to the challenges of **reason** or **principle**, precisely because reason and what is often called "false universalism" are, according to this pattern of thinking, **always** involved in forms of **exclusion**, **power**, or **domination**. My book insists, by contrast, that argument is a form of **respect**, that the ideals of democracy, whether conceived from a nationalist or an internationalist perspective, rely fundamentally upon procedures of argumentation and debate in order to legitimate themselves and to keep their central institutions vital. And the idea that one should be **protected from debate**, that argument is somehow **injurious** to persons if it **does not honor** their desire to have their basic beliefs and claims and solidarities **accepted without challenge**, is **strenuously opposed**. As is the notion that **any** attempt to ask people to agree upon processes of **reason-giving argument** is somehow **necessarily** to impose a **coercive norm**, one that will ~~disable~~ [undermine] the **free expression** and **performance** of identities, feelings, or solidarities. Disagreement is, by the terms of my book, a form of respect, not a form of disrespect. And by disagreement, I don't mean simply to say that we should expect disagreement rather than agreement, which is a frequently voiced—if misconceived—criticism of Habermas. Of course we should expect disagreement. My point is that we should focus on the moment of dissatisfaction in the face of disagreement—the internal dynamic in argument that imagines argument might be the beginning of [End Page 281] a process of persuasion and exchange that could end in agreement (or partial agreement). For those who advocate **reconciling** ourselves to disagreements rather than **arguing them out**, by contrast, there is a **complacent**—and in some versions, even **celebratory**—attitude toward fixed disagreement. Refusing these options, I make the case for dissatisfied disagreement in the final chapter of the book and argue that people should be willing to **justify** their positions in dialogue with one another, especially if they hope to live together in a post-traditional pluralist society.

One example of the trumping of argument by ethos is the form that was taken by the late stage of the Foucault/Habermas debate, where an appeal to ethos—specifically, an appeal to Foucault's style of ironic or negative critique, often seen as most in evidence in the interviews, where he would playfully refuse labels or evade direct answers—was used to exemplify an alternative to the forms of argument employed by Habermas and like-minded critics. (I should pause to say that I provide this example, and the framing summary of the book that surrounds it, not to take up airtime through expansive self-reference, but because neither of my respondents provided any contextualizing summary of the book's central arguments, though one certainly gets an incremental sense of the book's claims from Bruce Robbins. Because I don't assume that readers of this forum have necessarily read the book, and because I believe that it is the obligation of forum participants to provide sufficient context for their remarks, I will perform this task as economically as I can, with the recognition that it might have carried more weight if provided by a respondent rather than the author.)

The Foucauldian counter-critique importantly emphasizes a relation between style and position, but it obscures (1) the importance or value of the Habermasian critique and (2) the possibility that the other side of the debate might have its own ethos to advocate, one that has precisely to do with an ethos of argument, an ideal of reciprocal debate that involves taking distance on one's pre-given forms of identity or the norms of one's community, both so as to talk across differences and to articulate one's claims in relation to shared and even universal ideals. And this leads to the second thesis of the book, the insistence that an emphasis on ethos and character is interestingly present if not widely recognized in contemporary theory, and one of the ways its vitality and existential pertinence makes itself felt (even despite the occurrence of the kinds of unfair trumping moves I have mentioned). We often fail to notice this, because identity has so uniformly come to mean sociological, ascribed, or group identity—race, gender, class, nationality, ethnicity, sexuality, and so forth. Instances of the move toward character and ethos include the later Foucault (for whom ethos is a central concept), cosmopolitanism (whose aspiration it is to turn universalism into an ethos), and, more controversially, proceduralist ethics and politics (with its emphasis on sincerity and civility). Another version of this attentiveness to ethos and character appears in contemporary pragmatism, with its insistence on casualness of attitude, or insouciance in the face of [End Page 282] contingency—recommendations that get elevated into full-fledged exemplary personae in Richard Rorty's notion of the "ironist" or Barbara Herrnstein Smith's portrait of the "postmodern skeptic." These examples—and the larger claim they support—are meant to defend theory as still living, despite the many reports of its demise, and in fact still interestingly and incessantly re-elaborating its relation to practice. This second aspect of the project is at once descriptive, motivated by the notion that characterology within theory is intrinsically interesting, and critical, in its attempt to identify how characterology can itself be used to cover or evade the claims of rational argument, as in appeals to charismatic authority or in what I identify as narrow personifications of theory (pragmatism, in its insistence on insouciance in the face of contingency, is a prime example of this second form). And as a complement to the critical agenda, there is a reconstructive agenda as well, an attempt to recuperate liberalism and proceduralism, in part by advocating the possibility, as I have suggested, of an ethos of argument.

Robbins, in his extraordinarily rich and challenging response, zeroes in immediately on a crucial issue: who is to say exactly when argument is occurring or not, and what do we do when there is disagreement over the fundamentals (the primary one being over what counts as proper reasoning)? Interestingly, Robbins approaches this issue after first observing a certain tension in the book: on the one hand, The Way We Argue Now calls for dialogue, debate, argument; on the other, its project is "potentially something a bit stricter, or pushier: getting us all to agree on what should and should not count as true argument." What this point of entry into the larger issue reveals is a kind of blur that the book, I am now aware, invites. On the one hand, the book anatomizes academic debates, and in doing so is quite "debaterly." This can give the impression that what I mean by argument is a very specific form unique to disciplinary methodologies in higher education. But the book is not generally advocating a narrow practice of formal and philosophical argumentation in the culture at large, however much its author may relish adherence to the principle of non-contradiction in scholarly argument. I take pains to elaborate an ethos of argument that is linked to democratic debate and the forms of dissent that constitutional patriotism allows and even promotes. In this sense, while argument here is necessarily contextualized sociohistorically, the concept is not merely academic. It is a practice seen as integral to specific political forms and institutions in modern democracies, and to the more general activity of critique within modern societies—to the tradition of the public sphere, to speak in broad terms. Additionally, insofar as argument impels one to take distance on embedded customs, norms, and senses of given identity, it is a practice that at once acknowledges identity, the need to understand the perspectives of others, and the shared commitment to commonality and generality, to finding a way to live together under conditions of difference.

More than this: the book also discusses at great length and from several different angles the issue that Robbins inexplicably claims I entirely ignore: the [End Page 283] question of disagreement about **what counts as argument**. In the opening essay, "Debatable Performances," I fault the proponents of communicative ethics for not having a broader understanding of public expression, one that would include the disruptions of spectacle and performance. I return to and underscore this point in my final chapter, where I espouse a democratic politics that can embrace and accommodate a **wide variety** of expressions and modes. This is certainly a discussion of what counts as dialogue and hence argument in the broad sense in which I mean it, and in fact I fully acknowledge that taking distance from cultural norms and given identities can be advanced not only through critical reflection, but through ironic critique and defamiliarizing performance as well. But I do insist—and this is where I take a position on the fundamental disagreements that have arisen with respect to communicative ethics—that when they have an **effect**, these other dimensions of experience do not remain unreflective, and insofar as they do become reflective, they are contributing to the **very form of reasoned analysis** that their champions sometimes imagine they must **refuse** in order to liberate other modes of being (the **affective**, the **narrative**, the **performative**, the **nonrational**). If a narrative of human rights violation is persuasive in court, or in the broader cultural public sphere, it is because it draws attention to a violation of humanity that is condemned on principle; if a performance jolts people out of their normative understandings of sexuality and gender, it prompts forms of understanding that can be **affirmed** and **communicated** and also can be used to justify **political positions** and **legislative agendas**.

Robbins claims that I violate my own ideal of dialogue by failing to engage those who, according to him, are "[my] most significant antagonists": Jean-François Lyotard and Jacques Rancière. But it is simply not true that I fail to address the fundamental concerns that neither of these thinkers owns in any absolute sense. I might have addressed their work particularly (there are significant differences between them), and I think the example of Rancière is a particularly fruitful one, especially given his own critique of sociological reductionism (and identity politics), and his universalism, which shares affinities with the forms of poststructuralist universalism (notably, Etienne Balibar's) that I address in the third chapter of my book. But the relevant issues of incommensurability of language games or cultural perspectives, and the question of intractable or "hardwired" exclusion, are adduced and repeatedly critiqued throughout the book, across a range of disciplines. The debate between the accommodationist position of Thomas McCarthy and the universalist position of Habermas addresses these issues straight on, and the discussion of Habermas clearly maps out the two main alternatives to his position as (1) incommensurable perspectives and (2) overlapping consensus. The analysis of Satya Mohanty and Martha Nussbaum is also directly relevant: Mohanty situates his project with respect to a well-known and parallel debate in anthropology represented by the opposed positions of Ernest Gellner and Talal Asad. My emphasis on the newer discussions of accommodation, [End Page 284] rather than the incommensurability theorists (e.g., Lyotard), is meant to argue for the Habermasian position against its newer and more interesting challengers, and I also wanted the book to move beyond the parochial reference points of literary and cultural studies to engage relevant work in political theory and political philosophy. And of course I do discuss the work of many influential theorists and literary critics who oppose the approach I take in the book generally. But I'm not going to reproduce my complete range of references: readers are free to decide for themselves how comprehensive and various the theoretical landscape is in my book. But I will say in response to Robbins that my "primary antagonist" considered as a position rather than a set of proper names is consistently present in the book, and taken on in a number of different ways.

There is a deeper issue at play in Robbins's invocation of Lyotard and Rancière, especially given where his discussion of what he calls my "argumentative normativity" ends up. On the one hand, Robbins wants to say that the argument I am taking up is no longer relevant, that "thankfully" literary critics have moved past the critique of Enlightenment. On this account I am sadly unaware that my earlier books have actually had some influence, and seem to be stuck in an agonistic position that has no traction, and that at this point constitutes a regression toward a naively pro-Enlightenment position that is likely to invite—and that at some level deserves to invite—a strong reiteration of the critique of Enlightenment. The moves need to be replayed in slow motion here to discover exactly what is going on, since the argument is quite kinetic, and involves a dubious framing of my own project. It is certainly the case that in diagnosing the state of academic argument in the humanities today, I invoke, as one of the contributing factors, the excesses involved in the critique of Enlightenment. It is not the only factor I invoke, but it is certainly adduced as a major contributing factor to the denigration of reason, critical distance, and formal argument. I do agree with Robbins that there are many critics challenging the critique of Enlightenment. There are also, as it happens, many critics who have walked away from the debate to do other things. But it remains the case, as Robbins's own response makes clear, that the stronger version of the critique has a kind of staying power, particularly as a way of asserting political pedigree in the last instance. Indeed, Robbins must insist that I resurrect a version of the very form of Enlightenment that was once the whipping boy of poststructuralism, in order to himself reintroduce a high-stakes political allegory that will imagine cultural criticism to be an immediate actor in the current international political landscape.

Let's first examine the claim that my book is "unwittingly" inviting a resurrection of the "Enlightenment-equals-totalitarianism position." How, one wonders, could a book promoting **argument** and **debate**, and promoting **reason-giving practices** as a kind of common ground that should prevail over assertions of **cultural authenticity**, somehow come to be seen as a **dangerous resurgence** of bad Enlightenment? Robbins tells us why: I want "**argument on my own terms**"—that [End Page 285] is, I want to **impose reason** on people, which is a form of **power** and **oppression**. But **what can this possibly mean**? Arguments **stand** or **fall** based on whether they are **successful** and **persuasive**, even an argument in favor of argument. It **simply is not the case** that an argument in favor of the importance of reasoned debate to liberal democracy is **tantamount to oppressive power**. To assume so is to assume, in the manner of Theodor Adorno and Max Horkheimer, that reason is itself **violent**, **inherently**, and that it will **always mask power** and **enforce exclusions**. But to assume this is to assume the **very view of Enlightenment reason** that Robbins claims we are "thankfully" well rid of. (I leave to the side the idea that any individual can proclaim that a debate is over, thankfully or not.) But perhaps Robbins will say, "I am not imagining that your argument is **directly** oppressive, but that what you argue for **would be**, if it were **enforced**." Yet my book **doesn't imagine** or **suggest it is enforceable**; I simply **argue in favor of**, I promote, an ethos of argument within a liberal democratic and **proceduralist framework**. As much as Robbins would like to think so, neither I nor the books I write can be cast as an arm of the police.

Robbins wants to imagine a far more direct line of influence from criticism to political reality, however, and this is why it can be such a bad thing to suggest norms of argument. Watch as the gloves come off:

Faced with the prospect of submitting to her version of argument—roughly, Habermas's version—and of being thus authorized to disagree only about other, smaller things, some may feel that there will have been an end to argument, or an **end** to the arguments they **find most interesting**. With current events in mind, I would be surprised if there were no recourse to the metaphor of a regular army facing a **guerilla insurrection**, hinting that Anderson wants to force her opponents to **dress in uniform**, reside in **well-demarcated camps** and **capitals** that can be **bombed**, fight by the **rules of states** (whether the states themselves abide by these rules or not), and so on—in short, that she wants to get the battle onto a terrain where her side will be **assured** of having the **upper hand**.

Let's leave to the side the fact that this is a disowned hypothetical criticism. (As in, "Well, okay, yes, those are my gloves, but those are somebody else's hands they will have come off of.") Because far more interesting, actually, is the **sudden elevation of stakes**. It is a symptom of the sorry state of affairs in our profession that it plays out repeatedly this tragicomic tendency to give a **grandiose political meaning** to every object it analyzes or confronts. We have evidence of how desperate the situation is when we see it in a critic as thoughtful as Bruce Robbins, where it emerges as the need to allegorize a point about an argument in such a way that it gets cast as the **equivalent of war atrocities**. It is especially ironic in light of the fact that to the extent that I do give examples of the importance of liberal democratic proceduralism, I invoke the disregard of the protocols of international adjudication in the days leading up to the invasion of Iraq; I also speak [End Page 286] about concerns with voting transparency. It is **hard** for me to see how my argument about proceduralism can be associated with the policies of the **Bush administration** when that administration has exhibited a **flagrant disregard of** democratic **procedure** and the rule of law. I happen to think that a renewed focus on proceduralism is a timely venture, which is why I spend so much time discussing it in my final chapter. But I hasten to add that I am **not** interested in **imagining** that proceduralism is the **sole political response** to the needs of cultural criticism in our time: my goal in the book is to argue for a liberal democratic culture of argument, and to suggest ways in which argument is not served by trumping appeals to identity and charismatic authority. I fully admit that my examples are less political events than academic debates; for those uninterested in the shape of intellectual arguments, and eager for more direct and sustained discussion of contemporary politics, the approach will disappoint. Moreover, there will always be a tendency for a proceduralist to under-specify substance, and that is partly a principled decision, since the point is that agreements, compromises, and policies get worked out through the communicative and political process. My book is mainly concentrated on evaluating forms of arguments and appeals to ethos, both those that count as a form of trump card or distortion, and those that flesh out an understanding of argument as a universalist practice. There is an intermittent appeal to larger concerns in the political democratic culture, and that is because I see connections between the ideal of argument and the ideal of deliberative democracy. But there is clearly, and indeed necessarily, significant room for further elaboration here.

There is a way to make Robbins's point more narrowly, which would run something like this: Anderson has a very restricted notion of how argument should play out, or appear, within academic culture, given the heavy emphasis on logical consistency and normative coherence and explicitness. This conception of argument is too narrow (and hence authoritarian). To this I would reply simply that logical consistency and normative coherence and explicitness **do not exhaust** the possible forms, modes, and strategies of argumentation. There is a **distinction** to be made between the **identification** of moves that **stultify** or disarm **argument**, and an **insistence** on some sort of **single manner** of reasoned argument. The former I am **entirely committed** to; the latter **not at all**, despite the fact that I obviously favor a certain style of argument, and even despite the fact that I am philosophically committed to the claims of the theory of communicative reason. I do address the issue of diverse forms and modes of argument in the first and last chapters of the book (as I discuss above), but it seems that a more direct reflection on the book's own mode of argumentation might have provided the occasion for a fuller treatment of the issues that trouble Robbins.

Different genres within academe have **different conventions**, of course, and we **can** and **do** make decisions **all the time** about what **rises** to the **level of cogency** within specific academic venues, and what **doesn't**. Some of those judgments [End Page 287] have to do with protocols of argument. The book review, for example, is judged according to whether the reviewer responsibly represents the scholarship under discussion, seems to have a good grasp of the body of scholarship it belongs to, and convincingly and fairly points out strengths and weaknesses. The book forum is a bit looser—one expects responsible representation of the scholarship under discussion, but it can be more selectively focused on a key set of issues. And one expects a bit of provocation, in order to make the exchange readable and dramatic. But of course in a forum exchange there is an **implicit norm** of argument, a tendency to **judge** whether a particular participant is making a **strong** or a **weak case** in light of the **competing claims** at play. Much of our time in the profession is taken with **judging** the quality of **all manner** of academic performance, and much of it has to do with **norms of argument**, however much Robbins may worry about their potentially coercive nature.

From time to time I myself have wondered whether my book is too influenced by the modes of academe. But when I read a piece of writing like the one that Elspeth Probyn produced, I find myself feeling a renewed commitment to the evaluative norms of responsible scholarship, and to the idea that clearly agreed-upon genres and protocols of fair scholarship benefit from explicit affirmation at times. Probyn's piece does not conform at all to the conventions of the forum response. She may herself be quite delighted that it does not. Robbins may find himself delighted that she represents a viewpoint that does not agree on my (totalitarian) fundamentals of forum responses. But I would simply say that here we do not have fair or reasoned argument, which is one of the enabling procedures of forum exchanges. Indeed, I hear a different genre altogether: the venting phone call to a friend or intimate. In this genre, which I think we are all familiar with, one is not expected or required to give reasons or evidence, as one is in academic argument. Here's how the phone call might go: "Ugh. I have to write a response to this awful book. I agreed to this because I thought the book had an interesting title; it's called The Way We Argue Now. But I can't get through it; it isn't at all what I expected. I find myself alternately bored and irritated. It's so from the center—totally American parochial, and I just hate the style: polemical in a slam-bam-thank-you-ma'am way—really quite mean-spirited. She's so arrogant. And you wouldn't believe the so-called critique of Foucault. I don't know, I think I'm just sick of abstract theory—I mean, aren't we past this? It's so stultifying. I wish there were some way to get out of the commitment. I don't know how I'm ever going to get to it anyway, with all my journalism deadlines." The friend: "That sounds awful. But just use the occasion to write about something else, something you think is important. Write about yourself. Direct attention to a book that you do like. Whatever you do, don't spend too much time on it. And definitely call her out on the American centrism."

Do we really want to overhear this kind of conversation when we turn to the review section of a journal like Criticism? Of what intellectual value is it to know [End Page 288] Probyn's casual reactions to a book she won't bother responsibly to describe or engage, unless of course we accord to Probyn some sort of authority in advance that makes argument unnecessary. That she herself believes in such argument-by-authority is evident when she tells us, "As Stuart Hall would say, along with any undergraduate in my classes, 'A discourse is a group of statements that provide a language for talking about a particular kind of knowledge about a topic.'" This is the extent of Probyn's searing critique of the problem with advocating debate generally. But note that it relies, first, upon the invocation of an authority, Stuart Hall, and then upon the implication that her students have all entirely absorbed her own channeling of that authority. Probyn is entirely unbothered, moreover, that the undergraduates in her classes unblinkingly accept this empty statement without protest or challenge or further inquiry into its aimless specificity.

Probyn's piece is a mixture of affective fallacy, argument by authority, and bald ad hominem. There's a **pattern** here: precisely the tendency to **personalize argument** and to foreground what Wendy Brown has called "**states of injury**." Probyn says, for example, that she "felt ostracized by the book's content and style." Ostracized? Argument here is seen as **directly harming** persons, and this is precisely the state of affairs to which I **object**. Argument is **not injurious** to persons. **Policies** are injurious to persons and institutionalized practices can **alienate** and **exclude**. But argument itself is **not directly harmful**; once one says it is, one is **very close** to a logic of **censorship**. The **most productive thing** to do in an open academic culture (and in societies that aspire to freedom and democracy) when you encounter a book or an argument that you disagree with is to **produce a response** or a book that states your disagreement. But to assert that the book itself **directly harms you** is tantamount to saying that you **do not believe** in argument or in the **free exchange** of ideas, that your claim to injury somehow **damns your opponent's ideas**.

When Probyn isn't symptomatic, she's just downright sloppy. One could work to build up the substance of points that she throws out the car window as she screeches on to her next destination, but life is short, and those with considered objections to liberalism and proceduralism would not be particularly well served by the exercise. As far as I can tell, Probyn thinks my discussion of universalism is of limited relevance (though far more appealing when put, by others, in more comfortingly equivocating terms), but she's certain my critique of appeals to identity is simply **not able to accommodate** the importance of identity in social and political life. As I make clear throughout the book, and particularly in my discussion of the headscarf debate in France, identity is likely to be at the **center** of key arguments about life in plural democracies; my point is **not** that identity is **not relevant**, but simply that it should not be used to **trump** or **stifle** argument.

#### Debating antitrust policy does NOT require NOR produce any particular subjectivity -- BUT solves the historical inaccessibility of legal change and are prerequisite to the efficacy of their political project

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GREER: Right.

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

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

#### Two impacts:

#### First---fairness:

#### A predictable limit is the only way to give the neg a chance to win---radical aff choice shifts the grounds for the debate and puts the aff far ahead. Pre-tournament negative preparation is structured around the topic as a point of offense---anything else structurally favors the affirmative.

#### Fairness is an intrinsic good---debate is fundamentally a game and requires effective competition between the aff and the neg---the only way for any benefit to be produced from debate is if the judge can make a decision between two sides who have had a relatively equal chance to prepare for a common point of debate.

#### Fairness also comes before substance---deciding any other argument in this debate cannot be disentangled from our inability to prepare for it---any argument you think they’re winning is a link, not a reason to vote for them, because it’s just as likely that they’re winning it because we weren’t able to effectively prepare to defeat it.

#### Second---testing:

#### A well-defined resolution is critical to allow the neg to refute the aff in an in-depth fashion---this process of negation produces iterative testing and improvement, where we learn to improve our arguments based on our opponents’ arguments. This process does not proscribe particular styles or forms of argument, but does require a common point of disagreement around which arguments can be organized.

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

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

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

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

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

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

f) The Advantage Over Non‐Argumentative Alternatives

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

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

2. THE SEMANTICS OF AGONISTIC DISAGREEMENTS

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

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

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

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

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

## Case 1NC

### presumption

#### Vote NEG on presumption:

#### 1 – inherency’s a burden of proof – they already performed – NO reason ballot is key

#### 2 – turns case – symbolically affirming their method despite its disconnection from the material ONLY strengthens the logistical forces they’re trying to resist

Rigakos and Law 9 (George Rigakos, Assistant Professor of Law at Carleton University, and Alexandra Law, PhD, Legal Studies, Carleton University, “Risk, Realism and the Politics of Resistance,” Critical Sociology 35(1) 79-103, dml)

McCann and March (1996: 244) next set out the ‘justification for treating everyday practices as significant’ suggested by the above literature. First, the works studied are concerned with proving people are not ‘duped’ by their surroundings. At the level of consciousness, subjects ‘are ironic, critical, realistic, even sophisticated’ (1996: 225). But McCann and March remind us that earlier radical or Left theorists have made similar arguments without resorting to stories of everyday resistance in order to do so. Second, everyday resistance on a discursive level is said to reaffirm the subject’s dignity. But this too causes a problem for the authors because they:

query why subversive ‘assertions of self’ should bring dignity and psychological empowerment when they produce no greater material benefits or changes in relational power … By standards of ‘realism’, … subjects given to avoidance and ‘lumping it’ may be the most sophisticated of all. (1996: 227)

Thus, their criticism boils down to two main points. First, everyday resistance fails to tell us any more about so-called false consciousness than was already known among earlier Left theorists; and second, that a focus on discursive resistance ignores the role of material conditions in helping to shape identity.

Indeed, absent a broader political struggle or chance at effective resistance it would seem to the authors that ‘powerlessness is learned out of the accumulated experiences of futility and entrapment’ (1996: 228). A lamentable prospect, but nonetheless a source of closure for the governmentality theorist. In his own meta-analysis of studies on resistance, Rubin (1996: 242) finds that ‘discursive practices that neither alter material conditions nor directly challenge broad structures are nevertheless’ considered by the authors he examined ‘the stuff out of which power is made and remade’. If this sounds familiar, it is because the authors studied by McCann, March and Rubin found their claims about everyday resistance on the same understanding of power and government employed by postmodern theorists of risk. Arguing against celebrating forms of resistance that fail to alter broader power relations or material conditions is, in part, recognizing the continued ‘real’ existence of identifiable, powerful groups (classes). In downplaying the worth of everyday forms of resistance (arguing that these acts are not as worthy of the label as those acts which bring about lasting social change), Rubin appears to be taking issue with a locally focused vision of power and identity that denies the possibility of opposing domination at the level of ‘constructs’ such as class.

Rubin (1996: 242) makes another argument about celebratory accounts of everyday resistance that bears consideration:

[T]hese authors generally do not differentiate between practices that reproduce power and those that alter power. [The former] might involve pressing that power to become more adept at domination or to dominate differently, or it might mean precluding alternative acts that would more successfully challenge power. … [I]t is necessary to do more than show that such discursive acts speak to, or engage with, power. It must also be demonstrated that such acts add up to or engender broader changes.

### Political engagement good

#### Political engagement can change the terrain and enact meaningful local improvements, despite overarching systems.

Zack 16 – Dr. Naomi Zack, Professor of Philosophy at the University of Oregon, PhD in Philosophy from Columbia University, Applicative Justice: A Pragmatic Empirical Approach to Racial Injustice, p. 154-170

Fortunately, to the extent that the present global capitalistic system is the ultimate structure supporting regress in internal US progress toward social justice for African Americans, resignation is not the only realistic or prudent response. A global system works on many institutional levels of governmental and economic structure, including its injustice as experienced by real people who suffer from it in their concrete daily existence. And it is that kind of individually experienced injustice, which can be addressed, on the ground. It may not be (as Alexander and West have, respectively, called for and proclaimed to have begun) that even a movement is necessary or sufficient in order to address specific contemporary experiences of injustice. It may be that tangible practical first steps can be taken on the level of local activism and it may be that in societies with democratic structures, such activism is more effective than the promulgation of liberatory global system theory'. If local problems are corrected without at the same time calling for a new national or global movement, there may be less political opposition on local levels. We will return to this question of “scope of activism” in the next section, after more theoretical ground has been reclaimed for “what to do.”

NEW CONSTRUCTIONS OF RACE

Global understanding is important—we are all required to be informed about the world—but it is not the only worthwhile theoretical goal. Theory and analysis are also important for developing ideas for how to correct injustice on concrete, specific levels. Under-examined in the construction of revisionist history, as well as in the idea of regress, is a circular theory of human history. We seem to go ahead, and then we go back. But what could it mean to “go back”? No one has claimed that the present or recent past duplicates the more distant past or literally replays it. Although, some scholars have claimed that some structures of status are remarkably resilient, even though the principles defending them have been rejected. For example, the idea that nonwhites are inferior to whites and need to be kept separate from them for the benefit of both groups has been abandoned as an explicit, official justification for racial segregation, but racial segregation—in US housing, education, and social life—has not been abandoned. (Residential segregation continues without legal requirement as the result of real estate prices, sedimented social practices, poverty, and mortgage lenders who redline.)

Rival Siegel argues that status arrangements may persist with complete legality after their original justificatory principles are struck down, so long as different justifications are concocted:

The ways in which the legal system enforces social stratification are various and evolve over time, Efforts to reform a status regime bring about changes in its rule structure and justificatory rhetoric—a dynamic I have elsewhere called ’preservation-through-transformation’ In short, status-enforcing state action evolves in form as it is contested.22

Siegel's thesis raises the question of what kind of thing or relation the original social stratification is, so that it can persist from generation to generation under different names, with different justifications. The social metaphysics could involve “memes,” or intergenerational habits, or outright lies and conspiracies. Perhaps there are power relationships between blacks and whites that members of each group inherit and whites are loathe to give up, because they have more power. To relate the present to the past in such ways is a complex interdisciplinary work consisting at least of sociology, history, and legal and political history, before philosophers and other theorists could formulate their own disciplinary interpretations. It may be simpler and more conclusive to approach this issue of permanent-status-through-change by starting fresh with present power and status differences.

When Alexander calls the present racially biased prison system “the new Jim Crow,” she adds that she does not mean to draw a literal comparison, but to write metaphorically.23 This raises the question of why we need a metaphor that invokes the past to describe present conditions that are well studied by contemporary social scientists, with events reported by journalists and recorded on video, as they occur. What would happen if we simply stayed with our current best descriptions and attempted to theorize them? One result might be to shift the discourse from a somewhat rigid idea of types of events, a kind of essentializing of history, to the use of more recent tools involving the idea of social construction.

It’s already well accepted within the academy that biological human racial divisions, as well as their social meanings, were constructed in the past.24 We also know that biological foundations for human races are now repudiated in the same scientific fields that invented them. That knowledge supports recognition of racial construction within society which was explicitly based on assumed biological determinism in the past. Indeed, one indication of a lack of biological foundation for racial taxonomies in society is the historical and geographic variation of the epistemology of social race. Thus, for example, before they were assimilated into the middle class, Europeans who were Irish, Italian, Jewish, Finnish, Polish, and even German, were not considered white; the ethnic category of Hispanic/Latino was created by the US census and has since been regarded as a race or at least an object of racism; Middle Eastern Americans came to be identified as a nonwhite racial group after 9/11; mixed black and white people are conventionally identified as black. Such social construction of race has always been closely associated with citizenship rights and social status and it has been maintained and changed for changing political and economic purposes.

Race and racial divisions should be viewed as constantly “under construction.” Dominant groups may reiterate some general ideas based on their knowledge of history, but their present focus is always on their present goals for dominance. Race as it has been known, and as we continue to know it, is a dynamic process. Consider, for example, Richard Nixon’s reported intentions to appeal to white racists, with language that would not explicitly mention blacks or other nonwhites. The social construction of black men as criminals that has accompanied broad public acceptance of police racial profiling, as well as the racial imbalance in incarceration, has its origins in this early 1970s political rhetoric and policy. That is, our present form of the social construction of black men started as a relatively new, post-civil rights movement strategy for getting votes. This is not to say that the strategy had not been successfully used before then, for instance, as Alexander notes, in extinguishing the late nineteenth-century populist movement.26 But it was a new political strategy for the 1970s. And all that was required to sustain it from then on was a steady increase in the funding and construction of the infrastructure supporting it, and occasional ideological revitalization. For example, in the 1988 presidential campaign, George H. W. Bush used against Michael Dukakis, his Democratic opponent, the example of William "Willie" Horton, a convicted first-degree murderer, Horton committed rape and assault when released on furlough during Dukakis's second term as governor of Massachusetts. In his first term as governor, Dukakis had vetoed a hill that would have stopped furloughs for first-degree murderers. Ergo, Dukakis was portrayed as “soft on crime," and Bush won the election. 27

If we view the social construction of race as an ongoing dynamic process, we need to understand that Nixon and H. W. Bush were not merely manipulating existing public fears about black men, but fanning them, exacerbating them, and giving them new faces—faces from their time, not faces from the late nineteenth century—and in that process reconstructing race. They were not turning the clock back to the beginning of a new era of Jim Crow (no matter how metaphorically that may be understood) but moving forward with new ideas about black male identity. Of course, these ideas were not difficult to “sell” because the paradigm case of black manhood they held up was genuinely scary and the mass of economically insecure white voters was already predisposed to accept a racist ideology. But “predisposed” does not mean “predetermined.”

The construction of the idea of the late twentieth-century black male ghetto dweller as an inherently dangerous and later crack-crazed maniac was a newly constructed stereotype. It prompted a whole new generation of nonblack women to clutch their purses when a black man stepped onto elevators with them, and signaled everyone else to click their car doors into “locked” when they saw a black man advancing down the street.28 In turn, these attitudes can be viewed as antecedents to acceptance of the legality of recent high profile cases of police homicide following attempted stops and frisks of unarmed young African American men. Overall, such stereotypes support the criminalization of black male bodies in the public imaginary because those bodies have become icons—they both symbolize criminals and are perceived as physically dangerous. That Willie Horton, who was a violent black male criminal, became the face of black male crime and not any one of hundreds of thousands other black men, who had already been incarcerated for possession of small amounts of marijuana or cocaine, meant and continues to mean, that the preoccupation with crime in America is a locus on physical crime. There is now a prevailing impression that “crime" means “physical violence," so that “white-collar crime" (a term now out of date sartorially) is not viewed as truly dangerous.

And physical crime is imagined to be mainly perpetrated by black men, an association so strong that being a criminal has become part of the casual identity of being a black male. The quotidian phenomenology of that new construction of race for all black men, especially poor black youth, is nothing less than the phenomenology of traumatic encounters with bullies against whom the victim cannot win—if the victim tries to win, he can be killed by police officers, with impunity.29

I suggest that we view the post—civil rights movement association of crime with African American men and boys as a new construction of race. Alexander names this construction “criminalblackman, 30 but does not sufficiently treat it as a new racial construction. She is aware that something new has occurred, but she views it as an attribute of crime, rather than a reconstruction of black maleness: “For black men, the stigma of being; a ‘criminal’ in the era of mass incarceration is funda- mentally a racial stigma. . . . Whiteness mitigates crime, whereas blackness defines the criminal.”31 Alexander does not tell us what she means by the preexisting “blackness” that defines the criminal. There is no preexisting blackness, except for dark skin and poverty. In this case, “criminal” defines and constructs blackness. And that is why the almost 70 percent of African Americans who are black, but not poor, also suffer from this new construction of “criminal black man.”

Such slanderous characterizations of an entire group as dangerously criminal do not directly result from the financial and economic structures of a system of global capitalism, descending like the forefinger of God to shape the minds of the white populace. They are opportunistically discovered by politicians seeking votes, based on their assumptions that their highest good is getting elected, instead of getting elected for the right reasons. (It should go without saying that such politicians cannot be presumed to believe what they say in order to get people to vote for them.) If the politicians get elected, they try out a few new programs. If those on whom the programs are inflicted (e.g., the victims of Reagan’s War on Drugs that followed a general valorization of “law and order”) are already vulnerable to government power and the rest of the population is not vigilant about everyone’s rights, the programs succeed and their growth accelerates in new times of crisis. Such programs will only work if they are able to intersect with existing or bur- geoning corporate interests, in this case, private prison contractors. If the intersection “takes," then soon enough, a criminal justice system such as the one in place is the historical result. It is a historical result because it developed over time and at many different stages its present state could not have been predicted with a high degree of probability. It may therefore be an unduly Manichean use of history to view such a system as a deliberate design by the ultimate architects of global corporate capitalism.

That is not to say that individuals, especially poor and nonwhite people, do not encounter the present criminal justice system as both real and unyielding. And it is not to overlook the jobs provided to law enforcement officers, prison personnel, and civilians who prosper from the economic stimulus of prisons in their locales,32 In addition, we should be concerned about Alexander's account of the dire consequences for eligibility for government aid and prospective employment, as well as loss of personal and familial regard, suffered by contemporary felons. Once convicted, or sometimes, even only arrested for minor drug offenses, the poor and especially black victims of this system become branded as lifelong criminals. They are usually barred from both jury duty and voting and are precluded from ever fully rejoining respectable society. Their inability to vote in geographical areas with large poor black populations can tip the results of key elections. Most of the victims and fearful observers are now accustomed to this system, their habits settled within and outside it, as though it were completely natural, “just the way things are.”33 These are terrible conditions of existence for millions of poor black people. However, the question is not whether or not they are related to larger historical trends, which they without question are, but whether the most effective way to address them via activist discourse is to take on the big global picture or focus on comparative ways in which American blacks and whites, poor and middle class, are treated by their—everyone’s—government.

The prison-poverty system became an entrenched institution by the mid-1990s. Alexander notes that during the Clinton administration, the prison budget, after increasing by 171 percent, became twice what was allocated to Aid to Families with Dependent Children (AFDC) and that funding for public housing was reduced by 61 percent. At the same time, those who had been convicted for drug offenses were barred from public housing and faced homelessness.34 Described in these terms, the prison-poverty system exceeds the institution of Jim Crow because of its dedicated federal funding. In studying this structure, everything that happens can be described as though it were designed to oppress poor black people, for the benefit of others. But even that description, in addition to its transcendental excess, may rely too much on the net results of contingent, uncertain, incremental components. Moreover, although poor black ghetto dwellers are the main human resources for this system and the rate of poverty among American blacks is twice that among whites, most American blacks, about 75 percent, are not at this time poor ghetto dwellers.35 The majority of American blacks, who are neither poor nor incarcerated are stigmatized and thereby endangered by stereotypes that connect the prison to the ghetto, but they are not directly part of that connection. This does not mean life is not unjust for all African Americans, but it does mean that the majority retains its civic ability to educate the next generation, vote, protest, and cultivate optimism about the future. (A visitor from another planet might wonder if that majority is doing enough to fulfill its civic obligations in the early twenty-first century.)

HISTORICAL AND POLITICAL BOUNDARIES

Unlike Jim Crow, which had mainly excluded blacks from mainstream economic and social life, the post—civil rights criminal justice system initiated positive federal programs that were intended to directly and punitively address African Americans, partly because key people in government believed that was what white Americans wanted. While it seemed at first that affirmative action for middle-class African Americans was a helpful positive program—and it did in fact help many—white backlash attacking it as "reverse discrimination" has curtailed explicit affirmative action policies, under the direction of the US Supreme Court, Antidiscrimination laws remain on the books, but there is little evidence that antidiscrimination lawsuits, since 1980 have been effective. In place of affirmative action there has been a perceived need for racial diversity in organizations and some observers conclude that compliance reviews are more effective than lawsuits tor organizational change, especially in the diversification of management positions. Overall, the twenty years following the success of the civil rights move- ment was a period of regress, which many observers in 2015 consider to remain in full swing. But, what is happening during this period is exactly a competition among interest groups, and as Bentley might have predicted, with no clear-cut resolution yet. It therefore makes sense to consider appropriate time frames with which to think about the current situation of racial injustice.

Raymond Williams was a twentieth-century English cultural critic who seems to be largely unknown to US philosophers of race who write about social justice. He was one of the founders of the British New Left Review, but his ideas were a site of contention for more orthodox Marxists, because he was skeptical of economic analyses that did not take lived cultural experience into account. Williams believed that masses, and also perhaps classes, did not literally exist, except for how theorists defined and viewed them. He also anticipated later feminist emphases on "nutritive and generative” aspects of lived experience as a major social institution on a par with the economy and politics. Williams has been considered most influential for his ideas that all members and groups in society contribute to its structured feelings at any given time and for his idea of the long revolution that recurred throughout his writing, after he introduced it in a 1961 book of the same title.37

The Long Revolution named by Williams was a process of social change toward democracy, which began in modernity in the late eighteenth century with the French Revolution, “the mould in which experience was cast."38 By “experience” in this context, Williams meant the experience of writers and poets, and he believed that what was expressed in literature both reflected feelings in society and influenced them. The structured feeling of the Long Revolution is centered on goals of universal human recognition, for all members of society, as whole human beings. Everyone is to be accepted for what they are in the system to come after capitalism: “There can be no acceptable human order while the full humanity of any class of men is in practice denied.”39

In disagreement with contemporary Marxists, Williams was skeptical of the ability of socialism or state control that would entail complex bureaucracy to realize the goal of universal humanity: “We seem reduced to a choice between speculator and bureaucrat and while we do not like the speculator, the bureaucrat is not exactly inviting either.”40 His proposed solution was a form of self-rule based on open discussion and voting, with representatives to larger governing bodies responsible to their constituents. Williams has been interpreted as advocating that “the people” rule themselves, but he is not usually associated with an archism.41 It is very difficult for a theorist to decide how big a picture to consider, how long a period of history to take as a unit for long-term trends. Since we cannot successfully intervene in a global system, and the same facts can usually be explained by more than one theory, there is little that can or should interfere with a long-term view that is tilted toward optimism. The temporal perspective introduced by Williams, although he probably would not have described it in these terms, permits us to think about history as extending into the future, as well as the past.42 Suppose that there is a Long Revolution and there are Wide Humanistic Values to match it, which preclude racism, because the full humanity of all human beings will be recognized, eventually. It might be useful, as a matter of sanity, as well as hope, to see the present conditions of American antiblack punitive racism as a relatively short span of events within those lengths. Such events need to be endured and the hope is that they will pass into the past at some stage in the future of the Long Revolution. About hope, Williams wrote the following at the end of Towards 2000: It is only in a shared belief and insistence that there are practical alternatives that the balance of forces and chances begins to alter.... Once the inevitabilities are challenged, we begin gathering our resources for a journey of hope. If there are no easy answers there are still available and discoverable hard answers and it is these that we can now learn to make and share. This has been, from the beginning, the sense and impulse of the Long Revolution.43 The Elasticity and Inclusiveness of Identities Since the US civil rights movement, African American theorists, academics especially, have emphasized the importance of black identity, in the tradition of W. E. B. Du Bois and Frantz Fanon. There has been a shift toward prophecy in Cornel West’s sense of speaking the truth about oppression in the present, but overall, the methodological consensus is that improvement in the conditions of African Americans needs to be demanded by and for African Americans, as a racial group. This discourse displays little confidence in human rights or a humani-tarianism such as Williams emphasized, because there is a longstanding belief that many whites have in the Long Oppression failed to recognize the humanity of blacks. Moreover, the language of “color blindness,” which does not mention race, is strongly associated with the regress of post-civil rights movement black poverty and deep experience of injustice in the criminal justice system. However, this view may be too concrete, too focused on short-term historical contingencies, to get us from here to where and how we want the future to be.

American politicians have been able for a while to manipulate and implement racism in racially neutral language, which leaves little opportunity for either nonwhite racial affirmation or successful race-based litigation—that is, judges do not accept wholly race-based affirmative action or complaints about antiblack racism in situations that have been already described in race-neutral language, such as the War on Drugs. Nevertheless, it does not follow from any of this that neutrality about race is not a humanistic ideal or that humanistic ideals are not valid general ideals. It may be a self-defeating long-term error, albeit expedient in the short term, to insist that all efforts toward improving the present conditions of poor African Americans be described in terms of their racial identities, rather than their human identities.

There are more poor whites than poor blacks or Hispanics in the United States, even though black poverty is twice as common as white poverty and the residential segregation of the black poor creates additional race-associated vulnerabilities.44 African American poor people are more vulnerable to the exploitation of being inducted into the US criminal justice system, as well as more vulnerable in lacking adequate housing, food, a living wage, and public education that provides real opportunities for their children. All of these ills and comparative disadvantages create distinct circumstances of the “blackpoor.” But the condition of poverty itself, where the poor have less income and wealth than those who are not poor, is a measurable condition that includes people of all races, including whites and especially whites who are homeless or unemployed. There has been much debate about whether race or class is more important to consider for understanding the situation of poor African Americans: Does black racial identity in an antiblack racist society predetermine a high likelihood of poverty, which persists over generations as antiblack racism continues? Or, is poverty sufficiently oppressive to account for its own persitence, regardless of race? Does race and racism change the nature of poverty? Or, is pover-ty, like criminality, part of a new black identity? Much can be said in answer to such questions about the theoretical aspects of race or class as a lens for studying the oppression of the blackpoor.

Lucius Outlaw has developed a now paradigmatic perspective that historical and contemporary studies of race support a critical theory of race that is more relevant to African American experience than traditional critical theories based on class.45 Still, the question in terms of activism and the correction of concrete social injustice is not how poverty has been caused, but how it can be corrected. (It may have causes mainly in racism but mainly economic corrections.) To correct poverty and attendant issues such as food insecurity and homelessness among children, it neither makes sense, nor is it morally principled, to focus on the poverty of only African Americans. The discourse of social class may not be adequate to account for institutional racism and specifically racist institutions, because there is usually an added element of ignorance, neglect, or malice, concerning blacks. But addressing poverty needs to be an inclusive project. It would not only become another contentious form of “affirmative action” if only the blackpoor were considered, but it would be cruel insofar as the poor of all racial groups suffer.

In 1961, at the age of ninety-three, W. E. B. Du Bois joined the Communist Party and then said the following to the New York Times'. “Capitalism cannot reform itself; it is doomed to self-destruction. No universal selfishness can bring social good to all. . . . Communism—the effort to give all men what they need and to ask of each the best they can contribute—this is the only way of human life.”46 Black spokespeo-ple have for many decades emphasized poverty as a primary human problem and not a problem for only black Americans. Martin Luther King Jr. expressed that humanitarian emphasis, as has Cornel West, in our own era. Following his award of the Nobel Peace Prize in 1964, King announced a shift from civil rights to human rights, through his organization of the multiracial Poor People's Campaign. Before he was assassinated in 1968, King envisioned a Poor People's March on Washington, D.C.47 West and Tavis Smiley, in their Poverty Tours, have emphasized the importance of "jobs with a living wage," as a goal for millions of Americans of all races.48 Poverty is also a world concern.

In a way similar to this racially inclusive view of poverty, US govern-ment action toward peoples of nonwhite races outside of our borders has been an African American concern, in black liberatory discourse. As early as 1919, nine years after he founded the NAACP, Du Bois organized a second Pan-African Congress in Paris, presenting a petition to the Versailles Peace Conference (or recognition of worldwide peoples’ rights to anticolonialist self-determination. The petition was rejected. Du Bois continued to connect the situation of American blacks with that of global people of color, until the NAACP expelled him in 1948, for reasons of political prudence involving the Cold War.49 King carried on Du Bois's insights that the treatment of African Americans was related to America's international policies, especially after he was awarded the 1964 Nobel Peace Prize. His protests of the Vietnam War and beyond that his call for land reform (in his 1967 Riverside Church speech), against US policy in Latin America, resulted in harsh assessments and dissention within the civil rights movement he had come to symbolize. He was also disinvited from the Johnson White House.50 We have already noted, in chapter 5, West's emphasis on US foreign policy, as part of the black prophetic tradition, as well as his harsh remarks about President Obama. West is also not welcome in Obama’s White House.51

These projects of making African American concerns more broad by extending the area of complaint and protest to nonblack American poor people and non-American people of color have not met with great success. They have neither strengthened the movements of their time, nor reduced or ended poverty (and American foreign policy has been impervious to their demands). Bitter reactions from the African American community to the US presidency reverberate when black liberatory spokespeople voice strong opinions on foreign policy. It is unimaginable at this time that such issues can be related to African American activism in official or public understandings, but it is also unimaginable that the issues are not related in reality. This is a situation of stasis.

However, there is now another dimension to global aspects of US social justice activism media. The pleas in a number of local demonstrations and protests about police homicide' of unarmed African Americans, such as “Hands Up, Don’t Shoot,’\* "I Can’t Breathe,” "Black Lives Matter" and “No Justice, No Peace," have been highly publicized by the mainstream media, as have successive police homicides after the death of Trayvon Martin in 2012,52 The New York Times brought all of this to a head on April 6, 2015, by posting a video of Walter Scott being shot in the back while fleeing a police officer in South Carolina. With prose befitting the cool temperature of The New Yorker magazine, Philip Gourivitch posted the following about that video:

There it was, front and center, on the home page of my local paper, the Times, and on the BBC, and the Guardian, and the Wall Street Journal, and thousands of other news sites, as well as hundreds of thousands of Facebook pages and Twitter feeds: a freeze-frame showing a white policeman in the process of shooting a black man to death, with a play button you could click to watch the whole killing from start to finish,54

Gourevitch went on to discuss the ethics of journalistic displays of people getting killed and raised a question of respect for death on the part of viewers. What Gourevitch neglected to point out was the power of this video to provide conclusive evidence of contemporary injustice concerning the contemporary issue of police officer killings of unarmed black men, for which there have customarily been acquittals or failures to indict. The usual justification that an officer has acted out of fear for his own life is not supported by this video. What Gourevitch does succeed in pointing out is the global publicity that now attends such incidents. This international dimension of US race relations is different from the connection between US domestic and foreign policy on a theoretical level because it has the potential to spark vast external moral pressure on American government entities, perhaps similar to the Cold War pressures that were influential in Brown v. Board of Education and the 1964 Civil Rights Act, as discussed in chapter 4.

Issues of poverty, including global poverty, expand theoretical concerns about the carceral and other existential vulnerabilities of poor African Americans, to include people of other races, notably whites domestically and other peoples of color abroad. By the same token US foreign policy raises issues of global white nonwhite racial divides Still in terms of activism, these have largely remained theoretical issues that support broader understanding. They may describe issues for move ments lost, past, or yet to be developed, but in terms of contemporary social justice activism, concrete change is a matter of US domestic issues concerning race relations and the practical tradition of the undra-matic, obscure aspects of the Long Revolution is very important. The vagueness of Williams s idea of the Long Revolution promises an ordinary, day-to-day methodology for addressing racial injustice. Ordinariness is required given the time span of the Long Revolution that according to Williams began in 1789. The ability to sustain continual low key and undramatic liberatory efforts may require the kind of faith found in activists within the black prophetic tradition, who were not as charismatic as Martin Luther King Jr., but attended to specific issues over decades. For instance, West contrasts the contributions of Ella Baker to those of King, describing her as “an unassuming person who helps the suppressed to help themselves.” Baker’s organizing work included her service as secretary of the NAACP, executive director of the Southern Christian Leadership Council, and cofounder of the Student Non-violent Coordinating Committee. Baker knew both Du Bois and King and was skilled at grassroots organizing, but she did not write essays or books or produce mesmerizing speeches. She talked about humility and service alongside everyday people and insisted that members of a movement motivate themselves.55 “Think Globally, Act Locally” In light of the insight that amounts to “Think globally, act locally,” borrowed from environmentalist planning discourse,56 let’s return now to Wacquant’s general model of the contemporary carceral system as a form of social control that extends beyond punishment for crimes. Wacquant’s analysis suggests that at least three different social situations would be more accessible to activist-sparked change than the overall global capitalist system: race-based residential segregation; impoverishment of the educational system as it serves the poor; assumptions about the traditional family that have had a slanderous effect on black family images. Residential segregation enables the architectural and geographic formation of ghettos as areas targeted for intrusive law enforcement surveillance, because poor and powerless blaeks are physically clustered in one place.57 Also, insofar as schools are financed by taxes based on property values, residential segregation results in impoverished resources for K-12 education. Both segregated substandard housing and inadequate schools are issues that can be addressed through local activism and support for the development of employable skills and jobs.

While the "feminization of poverty" has been well-documented, ad ditional attention could be paid to the assumption that women the primary caretakers for children, which explains why welfare and workfare programs have been concentrated on them, with the state replacing the function of a male provider in a nuclear family. However, ever since reactions to the 1965 Moynihan Report, and earlier in the work of E. Franklin Frazier, it has been known that many African Americans do not grow up in, or themselves form, traditional nuclear families with stay-at-home mothers and male breadwinner fathers. Positing poverty as the cause of this unconventional family structure had been the standing practice in sociology until Patrick Moynihan, writing for the US Department of Labor, claimed that the cause of black single mothers, illegitimacy, and extended family structures, was cultural pathology with roots in social arrangements that had been necessary under slavery and Jim Crow.59 Despite the obsessive morbid interest in Moynihan's characterization of family organization among the black poor, it has been outpaced by more broad historical changes.

Not only have women of color, especially African American women, always worked outside of their homes, but most white women and women in other racial and ethnic groups, on all socioeconomic levels, now work outside of their homes. For poor women, their employment hinges both on skills and available and accessible jobs. The surrogate traditional-family aspects of welfare and workfare can therefore be viewed as so outdated as not to be worth theoretical consideration. This means that the need for welfare and workfare programs reduces to a need for more jobs for poor black women—and a need for transportation to and from those jobs, as well as affordable childcare.60 As of April 2015, adult African American women had the highest rate of unemployment at 9.2 percent, compared to 6.5 for Latinas and 4.2 for white women, (The website of the National Womens Law Center has portals for instructions on how those concerned about this issue can email their congressmen and senators.)

Finally, a contemporary example of spoken and active discourse about an immediate problem has been provided by activists in Ferguson, Missouri, who met with President Obama in December 2014 to discuss their attempts to influences changes in local police practices. Said Ashley Yates, cofounder of the group Millennial Activists United, "We’re definitely going to keep doing the work on the ground, but meeting with the president, for me—well, I’ll say for everybody—is just an affirmation that this movement is working.”63 In February 2015, Ferguson activist groups called for 250 students to join them during spring break to provide community service such as clearing wreckage from earlier demonstrations and helping plant gardens. Said Patricia Barnes, a Democratic committeewoman for Ferguson, “The protests have got us here. The next step is to target the ballot box, to get people elected and to change policy. Students should take that back to their college campuses and build an infrastructure. . . . There is plenty to do.”64 Yes, there is plenty to do, but what needs to be done are fairly straightforward, day-to-day, community-based actions. Global systems are overreaching causal factors of local vulnerabilities, but there is no reason to believe that their local effects cannot be addressed on their local levels.

#### Demands on the government can move the political center and alter mutable societal attitudes. Their politics ensure the world stays the same.

Glaude 16 – Dr. Eddie S. Glaude, Professor of African American Studies and Religion at Princeton University, PhD in Religion from Princeton University, MA in African-American Studies from Temple University and MA in Religion from Princeton University, Democracy in Black: How Race Still Enslaves, p. 185-197

But Goldwater failed to realize that governmental indifference can harden hearts, and government action can create conditions that soften them. People's attitudes aren't static or untouchable. They are molded by the quality of interactions with others, and one of the great powers of government involves shaping those interactions-not determining them in any concrete sense, but defining the parameters within which people come to know each other and live together. Today, for example, most Americans don't believe women should be confined to the home raising children, or subjected to crude advances and sexist remarks by men. The women's-rights movement put pressure on the government, which in turn passed laws that helped change some of our beliefs about women. Similarly, the relative progress of the 1960s did not happen merely by using the blunt instruments of the law. Change emerged from the ways those laws, with grassroots pressure, created new patterns of interactions, and ultimately new habits. Neither Obama's election to the presidency nor my appointment as a Princeton professor would have happened were it not for these new patterns and habits.

None of this happens overnight. It takes time and increasing vigilance to protect and secure change. I was talking with a dose friend and he mentioned a basic fact: that we were only fifteen years removed from the passage of the Voting Rights Act of 1965 when Ronald Reagan was elected president and Republicans began to dismantle the gains of the black freedom struggle. Civil rights legislation and the policies of the Great Society had just started to reshape our interactions when they started to be rolled back. We barely had a chance to imagine America anew-to pursue what full employment might look like, to let the abolition of the death penalty settle in, to question seriously the morality of putting people in prison cells, and to enact policies that would undo what the 1968 Kerner Commission described as "two Americas"­ before the attack on "big government" or, more precisely, the attack on racial equality was launched. The objective was to shrink the size of government ("to starve the beast") and to limit its domestic responsibilities to ensuring economic efficiency and national defense. Democrats eventually buckled, and this is the view of government, no matter who is in office, that we have today. It has become a kind of touchstone of faith among most Americans that government is wasteful and should be limited in its role-that it shouldn't intrude on our lives. Politicians aren't the only ones who hold this view. Many Americans do, too. Now we can't even imagine serious talk of things like full employment or the abolition of prisons.

We have to change our view of government, especially when it comes to racial matters. Government policy ensured the vote for African Americans and dismantled legal segregation. Policy established a social safety net for the poor and elderly; it put in place the conditions for the growth of our cities. All of this didn't happen simply because of individual will or thanks to some abstract idea of America. It was tied up with our demands and expectations. Goldwater was wrong. So was Reagan. And, in many ways, so is Obama. Our racial habits are shaped by the kind of society in which we live, and our government plays a big role in shaping that society. As young children, our community offers us a way of seeing the world; it lets us know what is valuable and sacred, and what stands as virtuous behavior and what does not. When Michael Brown's body was left in the street for more than four hours, it sent a dear message about the value of black lives. When everything in our society says that we should be less concerned about black folk, that they are dangerous, that no specific policies can address their misery, we say to our children and to everyone else that these people are "less than"-that they fall outside of our moral concern. We say, without using the word, that they are niggers.

One way to change that view is to enact policies that suggest otherwise. Or, to put it another way, to change our view of government, we must change our demands of government. For example, for the past fifty years African American unemployment has been twice that of white unemployment. The 2013 unemployment rate for African Americans stood at 13.1 percent, the highest annual black unemployment rate in more than seventy years. Social scientists do not generally agree on the causes of this trend. Some attribute it to the fact that African Americans are typically the "last hired and first fired." Others point to changes in the nature of the economy; still others point to overt racial discrimination in the labor market. No matter how we account for the numbers, the fact remains that most Americans see double-digit black unemployment as "normal." However, a large-scale, comprehensive jobs agenda with a living wage designed to put Americans, and explicitly African Americans, to work would go a long way toward uprooting the racial habits that inform such a view. It would counter the nonsense that currently stands as a reason for long-term black unemployment in public debate: black folk are lazy and don't want to work.

If we hold the view that government plays a crucial role in ensuring the public good-if we believe that all Americans, no matter their race or class, can be vital contributors to our beloved community-then we reject the idea that some populations are disposable, that some people can languish in the shadows while the rest of us dance in the light. The question ''Am I my brother's or my sister's keeper?" is not just a question for the individual or a mantra to motivate the private sector. It is a question answered in the social arrangements that aim to secure the goods and values we most cherish as a community. In other words, we need an idea of government that reflects the value of all Americans, not just white Americans or a few people with a lot of money.

We need government seriously committed to racial justice. As a nation, we can never pat ourselves on the back about racial matters. We have too much blood on our hands. Remembering that fact-our inheritance, as Wendell Berry said-does not amount to beating ourselves over the head, or wallowing in guilt, or trading in race cards. Remembering our national sins serves as a check and balance against national hubris. We're reminded of what we are capable of, and our eyes are trained to see that ugliness when it rears its head. But when we disremember-when we forget about the horrors of lynching, lose sight of how African Americans were locked into a dual labor market because of explicit racism, or ignore how we exported our racism around the world-we free ourselves from any sense of accountability. Concern for others and a sense of responsibility for the whole no longer matter. Cruelty and indifference become our calling cards.

We have to isolate those areas in which long-standing trends of racial inequality short-circuit the life chances of African Americans. In addition to a jobs agenda, we need a comprehensive government response to the problems of public education and mass incarceration. And I do mean a government response. Private interests have overrun both areas, as privatization drives school reform (and the education of our children is lost in the boisterous battles between teachers' unions and private interests) and as big business makes enormous profits from the warehousing of black and brown people in prisons. Let's be clear: private interests or market-based strategies will not solve the problems we face as a country or bring about the kind of society we need. We have to push for massive government investment in early childhood education and in shifting the center of gravity of our society from punishment to restorative justice. We can begin to enact the latter reform by putting an end to the practice of jailing children. Full stop. We didn't jail children in the past. We don't need to now.

In sum, government can help us go a long way toward uprooting racial habits with policies that support jobs with a living wage, which would help wipe out the historic double-digit gap between white and black unemployment; take an expansive approach to early childhood education, which social science research consistently says profoundly affects the life chances of black children; and dismantle the prison-industrial complex. We can no longer believe that disproportionately locking up black men and women constitutes an answer to social ills.

This view of government cannot be dismissed as a naive pipe dream, because political considerations relentlessly attack our political imaginations and limit us to the status quo. We are told before we even open our mouths that this particular view won't work or that it will never see the light of day. We've heard enough of that around single payer health care reform and other progressive policies over the Obama years. Such defeatist attitudes conspire to limit our imaginations and make sure that the world stays as it is. But those of us who don't give a damn about the rules of the current political game must courageously organize, advocate, and insist on the moral and political significance of a more robust role for government. We have to change the terms of political debate.

Something dramatic has to happen. American democracy has to be remade. John Dewey, the American philosopher, understood this:

The very idea of democracy, the meaning of democracy, must be continually explored afresh; it has to be constantly discovered and rediscovered, remade and reorganized; while the political and economic and social institutions in which it is embodied have to be remade and reorganized to meet the changes that are going on in the development of new needs on the part of human beings and new resources for satisfying these needs.

Dewey saw American democracy as an unfinished project. He knew that the aims and purposes of this country were not fixed forever in the founding documents, but the particular challenges of our moment required imaginative leaps on behalf of democracy itself. Otherwise, undemocratic forces might prevail; tyranny in the form of the almighty dollar and the relentless pursuit of it might overtake any commitment to the idea of the public good; and bad habits might diminish our moral imaginations.

The remaking of America will not happen inside the Beltway. Too many there have too much invested in the status quo. A more robust idea of government will not emerge from the current political parties. Both are beholden to big money. Substantive change will have to come from us. Or, as the great civil rights leader Ella Baker said, "we are the leaders we've been looking for"-a model of leadership that scares the hell out of the Reverend Sharpton. We will have to challenge the status quo in the streets and at the ballot box. In short, it will take a full-blown democratic awakening to enact this revolution.

#### The state and the law are inevitable. Shouldn’t wish it away, but learn to work within it.

Eckersley 4

Robyn, Reader/Associate Professor in the Department of Political Science at the University of Melbourne, “The Green State: Rethinking Democracy and Sovereignty”, MIT Press, 2004, Google Books, pp. 3-8

While acknowledging the basis for this antipathy toward the nation- state, and the limitations of state-centric analyses of global ecological degradation, I seek to draw attention to the positive role that states have played, and might increasingly play, in global and domestic politics. Writing more than twenty years ago, Hedley Bull (a proto-constructivist and leading writer in the English school) outlined the state's positive role in world affairs, and his arguments continue to provide a powerful challenge to those who somehow seek to "get beyond the state," as if such a move would provide a more lasting solution to the threat of armed conflict or nuclear war, social and economic injustice, or environmental degradation.10 As Bull argued, given that the state is here to stay whether we like it or not, then the call to get "beyond the state is a counsel of despair, at all events if it means that we have to begin by abolishing or subverting the state, rather than that there is a need to build upon it."" In any event, rejecting the "statist frame" of world politics ought not prohibit an inquiry into the emancipatory potential of the state as a crucial "node" in any future network of global ecological governance. This is especially so, given that one can expect states to persist as major sites of social and political power for at least the foreseeable future and that any green transformations of the present political order will, short of revolution, necessarily be state-dependent. Thus, like it or not, those concerned about ecological destruction must contend with existing institutions and, where possible, seek to "rebuild the ship while still at sea." And if states are so implicated in ecological destruction, then an inquiry into the potential for their transformation even their modest reform into something that is at least more conducive to ecological sustainability would seem to be compelling. Of course, it would be unhelpful to become singularly fixated on the redesign of the state at the expense of other institutions of governance. States are not the only institutions that limit, condition, shape, and direct political power, and it is necessary to keep in view the broader spectrum of formal and informal institutions of governance (e.g., local, national, regional, and international) that are implicated in global environmental change. Nonetheless, while the state constitutes only one modality of political power, it is an especially significant one because of its historical claims to exclusive rule over territory and peoples—as expressed in the principle of state sovereignty. As Gianfranco Poggi explains, the political power concentrated in the state "is a momentous, pervasive, critical phenomenon. Together with other forms of social power, it constitutes an indispensable medium for constructing and shaping larger social realities, for establishing, shaping and maintaining all broader and more durable collectivities."12 States play, in varying degrees, significant roles in structuring life chances, in distributing wealth, privilege, information, and risks, in upholding civil and political rights, and in securing private property rights and providing the legal/regulatory framework for capitalism. Every one of these dimensions of state activity has, for good or ill, a significant bearing on the global environmental crisis. Given that the green political project is one that demands far-reaching changes to both economies and societies, it is difficult to imagine how such changes might occur on the kind of scale that is needed without the active support of states. While it is often observed that states are too big to deal with local ecological problems and too small to deal with global ones, the state nonetheless holds, as Lennart Lundqvist puts it, "a unique position in the constitutive hierarchy from individuals through villages, regions and nations all the way to global organizations. The state is inclusive of lower political and administrative levels, and exclusive in speaking for its whole territory and population in relation to the outside world."13 In short, it seems to me inconceivable to advance ecological emancipation without also engaging with and seeking to transform state power. Of course, not all states are democratic states, and the green movement has long been wary of the coercive powers that all states reputedly enjoy. Coercion (and not democracy) is also central to Max Weber's classic sociological understanding of the state as "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory."14 Weber believed that the state could not be defined sociologically in terms of its ends\* only formally as an organization in terms of the particular means that are peculiar to it.15 Moreover his concept of legitimacy was merely concerned with whether rules were accepted by subjects as valid (for whatever reason); he did not offer a normative theory as to the circumstances when particular rules ought to be accepted or whether beliefs about the validity of rules were justified. Legitimacy was a contingent fact, and in view of his understanding of politics as a struggle for power in the context of an increasingly disenchanted world, likely to become an increasingly unstable achievement.16 In contrast to Weber, my approach to the state is explicitly normative and explicitly concerned with the purpose of states, and the democratic basis of their legitimacy. It focuses on the limitations of liberal normative theories of the state (and associated ideals of a just constitutional arrangement), and it proposes instead an alternative green theory that seeks to redress the deficiencies in liberal theory. Nor is my account as bleak as Weber's. The fact that states possess a monopoly of control over the means of coercion is a most serious matter, but it does not necessarily imply that they must have frequent recourse to that power. In any event, whether the use of the state's coercive powers is to be deplored or welcomed turns on the purposes for which that power is exercised, the manner in which it is exercised, and whether it is managed in public, transparent, and accountable ways—a judgment that must be made against a background of changing problems, practices, and under- standings. The coercive arm of the state can be used to "bust" political demonstrations and invade privacy. It can also be used to prevent human rights abuses, curb the excesses of corporate power, and protect the environment. In short, although the political autonomy of states is widely believed to be in decline, there are still few social institution that can match the same degree of capacity and potential legitimacy that states have to redirect societies and economies along more ecologically sustainable lines to address ecological problems such as global warming and pollution, the buildup of toxic and nuclear wastes and the rapid erosion of the earth's biodiversity. States—particularly when they act collectively—have the capacity to curb the socially and ecologically harmful consequences of capitalism. They are also more amenable to democratization than cor- porations, notwithstanding the ascendancy of the neoliberal state in the increasingly competitive global economy. There are therefore many good reasons why green political theorists need to think not only critically but also constructively about the state and the state system. While the state is certainly not "healthy" at the present historical juncture, in this book I nonetheless join Poggi by offering "a timid two cheers for the old beast," at least as a potentially more significant ally in the green cause.17

#### Legal engagement’s good, the aff risks violent fill-in

McCluskey 8 – Martha T. McCluskey, Faculty Scholar and Professor at the State University of New York at Buffalo, “Book Review: Thinking with Wolves: Left Legal Theory After the Right's Rise Left Legalism/Left Critique”, Buffalo Law Review, 54 Buffalo L. Rev. 1191, January, Lexis

More generally, Left Legalism's examples of the failures of liberal law reforms may be evidence of the weakness of left politics as much as the weakness of left legalism. The equal treatment/special treatment dilemma that confronts feminist and anti-racist law reforms, for example, is not a natural (or supernatural) feature of equality law but instead is the product of a particular political strategy addressing inequality as a problem of individual irrational prejudice against "difference" rather than a problem of systemic subordination that produces, institutionalizes, and rationalizes certain "differences" as really and reasonably inferior. 376 Outside the United States, in some countries where equality movements - and legal scholars - have more widely adopted a left-leaning analysis of structural subordination, equality law has gone further to incorporate [\*1275] a disparate impact standard that can require the government to question and change this production and rationalization of difference. 377Link to the text of the note An impact-based equality rule can require the government to respond to "differences" of race, gender, and disability (for instance) not as "special" needs of a particular identity group but as normal and equal public benefits. 378

Indeed, anti-legalism among non-conservative legal scholars may reflect and reinforce not gutsy left politics but left political cowardice (or capitulation to right politics) given a political context in which advocating left law is less likely to be rewarded than challenging left law. 379Link to the text of the note It seems likely that non-conservative scholars will do more to advance right rather than left politics if, for example, they attribute liberal law's inadequacies in promoting racial justice to legalism in general rather than to particular legal rules (and particular political movements) that presume and protect white privilege. 380

[\*1276] Finally, in amplifying the longstanding CLS (and neoliberal) argument that legal rights do not trump political interests, Left Legalism risks naturalizing political interests as somehow more independent, authentic, and determinate than legal rights. A critical left analysis should understand that those interests are not fixed, but are dynamically shaped by a variety of social and political factors including the law. From a critical perspective, judging the social and political impact of those interests is every bit as convoluted, unpredictable, and ideological as judging the impact of legal rights.

Kelman and Lester, for example, mythologize - and depoliticize - the process of formulating and contesting political interests when they complain that "left multiculturalists" threaten irrational and chaotic distributive politics by replacing careful measurement and balancing of "genuine" costs and benefits with ideological claims to "rights" based on disablity status. 381Link to the text of the note A Foucauldian insight that rights produce as well as reflect - or mask - interests and identities challenges not just the natural superiority and authenticity of legalistic rights but also the natural superiority and authenticity of political interests. In contrast to Kelman and Lester's analysis, for instance, sociolegal scholars David Engel and Frank Munger show the rich interdependence of legal rights, personal identity, and political interests in their study of persons negotiating identities as learning disabled. 382Link to the text of the note Engel and Munger conclude that even when formal rights-based claims are rarely invoked or weakly enforced, a liberal civil rights framework can serve to dramatically and meaningfully reconstruct ideas about individual capabilities and interests. 383

[\*1277] Left law reform advocates, like those on the right, have often effectively used rights-based advocacy to change political interests and identification in circumstances where their political strength is insufficient to meaningfully secure or enforce those legal rights. For example, Martha Davis describes how welfare rights advocates have used international human rights claims to inspire, inform, and mobilize new political activism and coalitions even while recognizing that international law will have little or no binding impact on U.S. welfare policy in the near future. 384Link to the text of the note Similarly, right-wing campaigns against abortion, welfare, affirmative action, or gay rights, for example, may often be directed less at changing specific laws on these "cultural" issues and more at reshaping politics so that many working and middle class Americans sacrifice their economic interests (whether willingly or unwittingly) out of hopes or fears that more symbolic forms of status will offer better security. 385

2. Adding a Left Critique of Extra-Legal Innocence. Second, Left Legalism needs to go further to strip law's outside of its guise of essentialized innocence. Both left and right critics are right that law's power cannot be neatly contained by formal rules of law (liberal law reforms have unintended consequences that may be harmful and illiberal). But the same is true of any supposedly non-legal exercise of power, regardless of any assumed connection to market, divinity, social tradition, or radical transgression of any of the foregoing. That means that eschewing legalism is as illusory a route to moral (or anti-moralist) purity as embracing legalism.

Left Legalism tends to drift from its critical recognition that all law involves potentially dangerous power toward a wistful desire for liberalism's neutrality. The contributors [\*1278] often seem seduced by the neoliberal fantasy that an unregulated space of free, independent, and authentic individual subjectivity awaits those who reject liberal rights. 386Link to the text of the note When Halley criticizes feminist law reforms for engaging in moral regulation, she admits that this complaint "makes one sound like a libertarian." 387Link to the text of the note

Similarly, when Ford criticizes left and liberal "cultural rights" for exercising moral and political power, he tends to avoid the harder questions of which moral and political power is most justified. For example, he rejects a construction of racial equality that would include a right of workers to wear braided hair out of fear that such a right would constrain individuals' ability to define their own cultural identity. 388Link to the text of the note "Private institutions, in marked contrast to the state, with a very few exceptions, do not even attempt to provide such authoritative censorship and approval. When and if they do, they usually are met with equally legitimate competitors who censor and approve of different things." 389Link to the text of the note

From a critical perspective, state power and legal rights pervade these supposedly "private" institutions. And from a left perspective, the supposedly "private" spheres of workplace, church, family, plantation, housing market, health care system, and mass media - for just a few examples - historically have been deeply enmeshed in, constrained by, and productive of the same historical inequalities and coercive powers that pervade the state. If courts deny cultural rights to black workers who choose to wear cornrows, to consider Ford's example, they will likely recognize and enforce not individual freedom to define identity, but employers' rights, for example, to fire a white woman whose make-up is deemed insufficiently "feminine," or to fire a black woman whose un-straightened hair is deemed insufficiently "professional." And without unblinking faith in a fundamentally fair market, it seems [\*1279] unlikely that those "unfeminine" and "unprofessional" women will readily find an equal number of similarly rewarding jobs where employers are equally eager to reward their particular gender and race expressions and to penalize others for instance, white men without make-up or white men who don't alter their naturally straight, balding, or graying hair.

Taking seriously the capacity of legal rights to produce as well as to protect individuals and their interests, left activism and intellectualism should have all the more reason to engage, rather than cede, rights-based law reform. Wendy Brown's chapter on rights affirms the paradoxical necessity and danger of feminist rights, but then tends to imagine that the productive capacity of rights will necessarily threaten left ideals. 390 Why does Brown see a problem, rather than a possibility, when she observes that left visions of rights based on intersecting identities will bring into being new political subjects? 391 When welfare mothers, for instance, seize on human rights discourse to build legitimacy as political actors participating in a global quest for political, racial, gender, and economic justice, their new identity - however risky and regulatory - might still well be a welcome change from the regulatory impact of an anti-rights identity as needy or greedy societal dependents, sexual deviants, or market failures.

Finally, when Brown and Halley criticize "governance legalism" for implicating left politics in potentially coercive power, they seem to refuse left power as much as left statism. Commenting on the example of AIDS activists who sought participation in Food and Drug Administration procedures, they argue that, "this kind of left legalism seeks to involve the left directly in governance: once you win, you are the state." 392 They are right to warn that any particular left regulatory effort should be scrutinized for anti-left impact, and that in a society of systematic [\*1280] subordination, few regulatory reforms will be free of political constraints that make liberation for some contingent on oppression of other subordinated groups. Yet they ignore that the same problematic effects equally challenge any left abstention from (or resistance to) state governance, unless we fall back on fundamentalist faith in an autonomous private sphere inherently and naturally safe from oppressive power (as do right-wing market or moral fundamentalists).

From a critical perspective that refuses such fundamentalism, the hard and urgent question is not whether or not to be "the state," but which state structures, governed in whose interests, we (and others) will have the risk and responsibility of being part of and being subjected to. Guerrilla theater by Act-Up activists may feel more liberating, transgressive, and comfortable to some U.S. activists and scholars than tedious, marginalized, and morally messy involvement in federal bureaucracy. But those feelings provide no guarantee of left moral superiority or political effectiveness in a time when pharmaceutical companies and right-wing Christians are happy to seize state authority to advance their interests at the expense of millions of lives. As the "stupidest housemaid" concludes in Paul Butler's rewriting of the classic jurisprudential story of the Spelunkian Explorer, surrendering the power to invoke the rule of law is even stupider and more pitiful than believing in the rule of law.

#### Tactical engagement with law don’t produce violence---rejecting it is worse

Dean 1 – Mitchell Dean, Professor of Sociology at Macquarie University in Australia, STATE OF IMAGINATION: ETHNOGRAPHIC EXPLORATIONS OF POSTCOLONIAL SPACE, Ed: Thomas Blom Hansen, p. 61-62

The study of governmentality has yet to open up the extensive discussion of authoritarian and nonliberal governmentality. Foucault's analysis of National Socialism is a striking contribution to this problem for a number of reasons. First, it shows that this case of what might be thought of as, to put it mildly, a nonliberal or authoritarian form of rule is composed, like liberal rule, of biopolitical and sovereign elements. It also places National Socialism, like liberalism, within the development of a government of biopolitical processes. This does not mean that we should efface the differences between liberal and nonliberal rule. Nor is this analysis an attempt to undermine critical distinctions between such forms. What it does illustrate, however, are the dangers inherent in biopolitical rule and in the articulation of the shepherd-flock and city-citizen games that Foucault held as central to modem politics. The continuities between authoritarian and liberal governmentality, together with the recovery of the illiberal components of liberalism, remind us of the dangers of not calling into question the self-understanding of liberalism as a limited government acting through a knowledge of the processes of life, yet, at the same time, safeguarding the rights of the political and juridical subject. There is no necessity that means that our most general rationalities of rule such as sovereignty and biopolitics will ineluctably lead to the truly demonic eventualities we have continued to witness right to the beginning of the twenty-first century. Nor, however, is there any guarantee that the appeal to rights within liberal democracies and the international community of states will guard against such eventualities, as the contemporary confinement of illegal immigrants in camps in liberal democracies attests. Elements within sovereignty and biopolitics will continue to provide resources for political rationality and action in Weber's sense of the attempt to influence the government of organization. But there can be no system of safeguard's that offer us a zone of comfort when we engage in political action. When we do so, Foucault's position here seems to suggest, we enter a zone of uncertainty and danger because of the governmental resources we have at our disposal. We might add that the price of not engaging in political action is equally great if not greater. A condition of informed political action remains an analysis of the actors involved, the contexts of their action, the resources at hand, the tactics used, and the ends sought. Though handling this relation between biopolitics and sovereignty remains tricky, we must establish an analysis of the way an implementation of programs of the administration of life opens fresh arenas of contestation, negotiation, and redefinition around citizenship, democracy, and rights. We must also be prepared to admit, nevertheless, that the appeal to rights might link this form of contestation to the powers it contests, particularly when such an appeal concerns the rights of those with¬out any states but their mere existence.

#### Legal change works. The aff doesn’t.

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The democratic movements have broken down the sterile and false separation between the oikos and the polis argued for by Hannah Arendt40, and the similar separations between everyday life and social reproduction and public life, between zoe and bios. This is not by chance: slave plantations were private homes; the family enterprise studied by Marx was considered virtually an extension of the owners‟ household; the needs of working families for subsistence or health care, or the infant mortality rate, unwanted pregnancies and their impact on women‟s lives and the mortality rate of women in childbirth were all considered private affairs, not public or political ones. It was the accomplishment of the modern workers and women‟s movements, of modern democracy, to change this state of affairs. Agamben sneeringly dismisses, indeed scarily demonizes this accomplishment as “biopolitics”: What comes to light in order to be exposed apud Westminster is, once again, the body of homo sacer, which is to say, bare life. This is modern democracy‟s strength, and at the same time, its inner contradiction: modern democracy does not abolish sacred life but rather shatters it and disseminates it into every individual body, making it into what is at stake in political conflict. And the root of modern democracy‟s secret biopolitical calling lies here: he who will later appear as the bearer of rights, and according to a curious oxymoron, as the new sovereign subject…can only be constituted as such through the repetition of the sovereign exception and the isolation of corpus, bare life, in himself. If it is true that law needs a body in order to be in force, and if one can speak, in this sense, of “law‟s desire to have a body”, democracy responds to this desire by compelling law to assume the care of this body.41 Agamben goes on to argue, incredibly, that the very right of habeas corpus by requiring the sheriff to exhibit the body of the accused undermines the liberty of the accused, an interpretation unique in the thousand-year history of habeas corpus rights whose defense has quite rightly underpinned many oppositions to Bush administration tactics in the War on Terror, and whose history has recently been provided a radical defense and materialist interpretation by Linebaugh already cited. The long process of democracy “compelling law to assume the care of the body” instead is the accomplishment of centuries of struggles by ordinary people precisely to move the state out of the business of killing and into the business of providing health care and education. This is what led Ernest Gellner to state, while overstating the case, “"At the base of the modern social order stands not the executioner but the professor… The monopoly of legitimate education is now more important, *more central than* the monopoly of legitimate violence.42” That the European social democratic welfare state coincided with the European Union‟s one great accomplishment, the end of wars between the nation-states of Europe should give us pause for thought43. That the abolition of the death penalty followed these developments should make the relationship clear. What seals the argument is that the revived militarism, political repression and demonization of unpopular minority groups in Europe follow upon the efforts directed by the EU Commission and signed on to by every EU member government to privatize, liberalize markets, overcome workers‟ resistance to “flexible” work organization, and impose neoliberal globalization44. The relationship between the democratic class struggle to defend subsistence and basic needs and the defense of individual rights and limitation of state power should be clear. That it isn‟t should be attributed to an elitist, too-sophisticated by half approach to the state, democracy and class struggle that appears radical but in fact undermines the very foundations of democracy and social welfare by not making these struggles an integral part of its analysis. The movements for democracy, the class and gender struggles that brought it about and have continued to try to extend it to more spheres of life are, as Marx explained to the First International, not extensions of state power, but partial transformations of the state from a police apparatus and killing machine for the ruling class into a set of functions whose institutions and cadre now concern themselves with caring for the needs of society’s members, with all the contradictions and flaws that studies of the welfare state have demonstrated but with all its benefits too: However, the more enlightened part of the working class fully understands that the future of its class, and, therefore, of (hu)mankind, altogether depends upon the formation of the rising working generation. They know that, before everything else, the children and juvenile workers must be saved from the crushing effects of the present system. This can only be effected by converting social reason into social force, and, under given circumstances, there exists no other method of doing so, than through general laws, enforced by the power of the state. In enforcing such laws, the working class do not fortify governmental power. On the contrary, they transform that power, now used against them, into their own agency. They effect by a general act what they would vainly attempt by a multitude of isolated individual efforts45.

# 2NC

#### The text of the resolution calls for debate on hypothetical government action – they don’t meet

Ericson 03

**Core laws are the Sherman, Clayton, and FTC acts**

**Horton 18**—

#### Vote neg – the aff is not a governmental expansion of core antitrust laws

#### Our impact is debatability:

#### Limits – A bounded topic serves as a preset stasis point for debate than ensure thematic coherence. A limitless topic destroys debate’s competitive incentives – guaranteeing a race to the margin distorting topic research

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

**The terms of the resolution create a language that offers a rubric for evaluating arguments under a deliberative framework. Discussions outside stasis are a rhetorical tactic straight out of Trump’s pocket—making the topic into a first-order question sidesteps deliberative testing, which breeds dogmatic group polarization and trades argumentation for power**

**Aikin and Talisse 17**—

**Analogies between limits and violent exclusion are faulty—argumentative exclusion is inevitable, but topicality ensures it occurs around reciprocal lines.**

**Anderson 06**

#### Debating antitrust policy does NOT require NOR produce any particular subjectivity -- BUT solves the historical inaccessibility of legal change and are prerequisite to the efficacy of their political project

Greer and Vallas 21

#### Two impacts:

#### First---fairness:

#### A predictable limit is the only way to give the neg a chance to win---radical aff choice shifts the grounds for the debate and puts the aff far ahead. Pre-tournament negative preparation is structured around the topic as a point of offense---anything else structurally favors the affirmative.

#### Fairness is an intrinsic good---debate is fundamentally a game and requires effective competition between the aff and the neg---the only way for any benefit to be produced from debate is if the judge can make a decision between two sides who have had a relatively equal chance to prepare for a common point of debate.

#### Fairness also comes before substance---deciding any other argument in this debate cannot be disentangled from our inability to prepare for it---any argument you think they’re winning is a link, not a reason to vote for them, because it’s just as likely that they’re winning it because we weren’t able to effectively prepare to defeat it.

#### Second---testing:

#### A well-defined resolution is critical to allow the neg to refute the aff in an in-depth fashion---this process of negation produces iterative testing and improvement, where we learn to improve our arguments based on our opponents’ arguments. This process does not proscribe particular styles or forms of argument, but does require a common point of disagreement around which arguments can be organized.

**Poscher 16**

### A2: Fairness Bad

#### Fairness isn’t just *an* impact, it’s the *winning* impact:

#### a) The only role of the ballot is to assign a win or loss within the competitive space of debate. There’s no transcendent, external value to voting for either team: we’re just a few people in a room and when we’re done we move onto the next, one debate among thousands that’ll be lost in an ocean of ideas, in an activity that’s totally marginal and really relevant only for those directly involved. Debate doesn’t affect broader systems in any way more significant than background noise that you should write out of your consideration. This isn’t being cynical, it’s stating what we all know and freely say on our own time, but pretend isn’t true in moments for strategic purposes. You should refuse that pretense.

#### b) It’s a prior question. Deciding any other argument in the debate cannot be disentangled from our ability to prepare for it. It’s chicken-egg: any ‘advantage’ they appear to win can’t be weighed because it’s only an artificial facet of the fact that we weren’t able to effectively prepare to defeat it.

c) There’s nothing outside of debate: out impact encompasses both theirs and that of any other argument! The value they generate is through their presentation which depend upon the functioning of the forum. To the extent they damage it, it makes the case self-defeating. Even if debate isn’t purely a game, they consent to certain procedures that demonstrate their dependence on debate. They come to the right room, follow speech times, agree the judge gives only one winner, and follow the elim bracket and all other tournament parameters. The operation of that game, and any possible external value that flows from it, requires effective competition between two teams. The only way for any benefit to be produced is if the judge can make a decision between an Aff and Neg who each ha

#### The context of fairness determines its purpose---like all things, it can be used for good or bad, by conservative judges to justify antiblack voter suppression and by black leaders to strike them down---this is question begging and requires them to win another independent argument elsewhere why our specific argument is bad

#### They assume fairness is automatically deployed to exclude---it doesn’t---it just levels the playing field

Burch, 8 - Assistant Professor, Cumberland School of Law (Elizabeth, “CAFA'S IMPACT ON LITIGATION AS A PUBLIC GOOD” 29 Cardozo L. Rev. 2517, May, lexis)

Given this shortcoming, the second procedural justice component is fairness. Fairness arguments are typically offered as policy reasons to trump pursuit of certain reform proposals and aggregate social goals; n101 however, I use fairness here (and in assessing CAFA) as a supplemental constraint rather than a substitute. Employing a deontological conception of fairness to balance utility aids in, not only distributing procedural costs and correcting procedural errors, but also in ensuring that the procedural system does not disproportionately favor or burden plaintiffs or defendants. n102 Put differently, process should disperse the risk of error and the cost of access as evenly as possible. Neither party [\*2535] should have an advantage. n103 This idea of "fairness" as avoiding lopsided distribution of error can be likened to the concept of "neutrality." n104 To be sure, some imparity in distributing risks may be inevitable.

Finally, although analogous to fairness, participation - manifested as adequate representation in the class context - humanizes process. n105 In its simplest form, participation necessitates that those who are bound by a decision have an opportunity to take part (and be heard) in adjudication. n106 Moreover, it encompasses inherent rights to present evidence, observe the proceedings, cross-examine witnesses, and hear the judge's decision. n107 And participation, even in class litigation, affords litigants dignity by granting them a forum in which to tell their story. n108 "Storytelling" has been criticized when used to demonstrate satisfaction with process as a proxy for "justice." n109 I use the term here, however, for its cathartic value only when situated within this larger [\*2536] procedural fairness framework.

#### Predictability maintains meaningful politics and empathy even if their DA is correct

Massaro 89 – Massaro, Prof Law – Florida, ’89 (Toni M, 87 Mich. L. Rev. 2099)

Yet despite their acknowledgment that some ordering and rules are necessary, empathy proponents tend to approach the rule-of-law model as a villain. Moreover, they are hardly alone in their deep skepticism about the rule-of-law model. Most modern legal theorists question the value of procedural regularity when it denies substantive justice. 52 Some even question the whole notion of justifying a legal [\*2111] decision by appealing to a rule of law, versus justifying the decision by reference to the facts of the case and the judges' own reason and experience. 53 I do not intend to enter this important jurisprudential debate, except to the limited extent that the "empathy" writings have suggested that the rule-of-law chills judges' empathic reactions. In this regard, I have several observations.

My first thought is that the rule-of-law model is only a model. If the term means absolute separation of legal decision and "politics," then it surely is both unrealistic and undesirable. 54 But our actual statutory and decisional "rules" rarely mandate a particular (unempathetic) response. Most of our rules are fairly open-ended. "Relevance," "the best interests of the child," "undue hardship," "negligence," or "freedom of speech" -- to name only a few legal concepts -- hardly admit of precise definition or consistent, predictable application. Rather, they represent a weaker, but still constraining sense of the rule-of-law model. Most rules are guidelines that establish spheres of relevant conversation, not mathematical formulas.

Moreover, legal training in a common law system emphasizes the indeterminate nature of rules and the significance of even subtle variations in facts. Our legal tradition stresses an inductive method of discovering legal principles. We are taught to distinguish different "stories," to arrive at "law" through experience with many stories, and to revise that law as future experience requires. Much of the effort of most first-year law professors is, I believe, devoted to debunking popular lay myths about "law" as clean-cut answers, and to illuminate law as a dynamic body of policy determinations constrained by certain guiding principles. 55

As a practical matter, therefore, our rules often are ambiguous and fluid standards that offer substantial room for varying interpretations. The interpreter, usually a judge, may consult several sources to aid in decisionmaking. One important source necessarily will be the judge's own experiences -- including the experiences that seem to determine a person's empathic capacity. In fact, much ink has been spilled to illuminate that our stated "rules" often do not dictate or explain our legal results. Some writers even have argued that a rule of law may be, at times, nothing more than a post hoc rationalization or attempted legitimization [\*2112] of results that may be better explained by extralegal (including, but not necessarily limited to, emotional) responses to the facts, the litigants, or the litigants' lawyers, 56 all of which may go unstated. The opportunity for contextual and empathic decisionmaking therefore already is very much a part of our adjudicatory law, despite our commitment to the rule-of-law ideal.

Even when law is clear and relatively inflexible, however, it is not necessarily "unempathetic." The assumed antagonism of legality and empathy is belied by our experience in rape cases, to take one important example. In the past, judges construed the general, open-ended standard of "relevance" to include evidence about the alleged victim's prior sexual conduct, regardless of whether the conduct involved the defendant. 57 The solution to this "empathy gap" was legislative action to make the law more specific -- more formalized. Rape shield statutes were enacted that controlled judicial discretion and specifically defined relevance to exclude the prior sexual history of the woman, except in limited, justifiable situations. 58 In this case, one can make a persuasive argument not only that the rule-of-law model does explain these later rulings, but also that obedience to that model resulted in a triumph for the human voice of the rape survivor. Without the rule, some judges likely would have continued to respond to other inclinations, and admit this testimony about rape survivors. The example thus shows that radical rule skepticism is inconsistent with at least some evidence of actual judicial behavior. It also suggests that the principle of legality is potentially most critical for people who are least understood by the decisionmakers -- in this example, women -- and hence most vulnerable to unempathetic ad hoc rulings.

A final observation is that the principle of legality reflects a deeply ingrained, perhaps inescapable, cultural instinct. We value some procedural regularity -- "law for law's sake" -- because it lends stasis and structure to our often chaotic lives. Even within our most intimate relationships, we both establish "rules," and expect the other [\*2113] party to follow them. 59 Breach of these unspoken agreements can destroy the relationship and hurt us deeply, regardless of the wisdom or "substantive fairness" of a particular rule. Our agreements create expectations, and their consistent application fulfills the expectations. The modest predictability that this sort of "formalism" provides actually may encourage human relationships. 60

#### Eliminating fairness is much worse

Tonn 5 – Prof of Communication @ Maryland

(Mari Boor, “Taking Conversation, Dialogue, and Therapy Public,” Rhetoric & Public Affairs 8.3)

This widespread recognition that access to public deliberative processes and the ballot is a baseline of any genuine democracy points to the most curious irony of the conversation movement: portions of its constituency. Numbering among the most fervid dialogic loyalists have been some feminists and multiculturalists who represent groups historically denied both the right to speak in public and the ballot. Oddly, some feminists who championed the slogan "The Personal Is Political" to emphasize ways relational power can oppress tend to ignore similar dangers lurking in the appropriation of conversation and dialogue in public deliberation. Yet the conversational model's emphasis on empowerment through intimacy can duplicate the power networks that traditionally excluded females and nonwhites and gave rise to numerous, sometimes necessarily uncivil, demands for democratic inclusion. Formalized participation structures in deliberative processes obviously cannot ensure the elimination of relational power blocs, but, as Freeman pointed out, the absence of formal rules leaves relational power unchecked and potentially capricious. Moreover, the privileging of the self, personal experiences, and individual perspectives of reality intrinsic in the conversational paradigm mirrors justifications once used by dominant groups who used their own lives, beliefs, and interests as templates for hegemonic social premises to oppress women, the lower class, and people of color. Paradigms infused with the therapeutic language of emotional healing and coping likewise flirt with the type of psychological diagnoses once ascribed to disaffected women. But as Betty Friedan's landmark 1963 The Feminist Mystique argued, the cure for female alienation was neither tranquilizers nor attitude adjustments fostered through psychotherapy but, rather, aunrestricted opportunities.102 [End Page 423] The price exacted by promoting approaches to complex public issues—models that cast conventional deliberative processes, including the marshaling of evidence beyond individual subjectivity, as "elitist" or "monologic"—can be steep. Consider comments of an aide to President George W. Bush made before reports concluding Iraq harbored no weapons of mass destruction, the primary justification for a U.S.-led war costing thousands of lives. Investigative reporters and other persons sleuthing for hard facts, he claimed, operate "in what we call the reality-based community." Such people "believe that solutions emerge from [the] judicious study of discernible reality." Then baldly flexing the muscle afforded by increasingly popular social-constructionist and poststructuralist models for conflict resolution, he added: "That's not the way the world really works anymore . . . We're an empire now, and when we act, we create our own reality. And while you're studying that reality—judiciously, as you will—we'll act again, creating other new realities."103 The recent fascination with public conversation and dialogue most likely is a product of frustration with the tone of much public, political discourse. Such concerns are neither new nor completely without merit. Yet, as Burke insightfully pointed out nearly six decades ago, "A perennial embarrassment in liberal apologetics has arisen from its 'surgical' proclivity: its attempt to outlaw a malfunction by outlawing the function." The attempt to eliminate flaws in a process by eliminating the entire process, he writes, "is like trying to eliminate heart disease by eliminating hearts."104 Because public argument and deliberative processes are the "heart" of true democracy, supplanting those models with social and therapeutic conversation and dialogue jeopardizes the very pulse and lifeblood of democracy itself.

### Testing---Turns Case

#### It turns and outweighs the case---they replace dialogue with monologue, where the 1AC is held as absolute truth---that turns the case by causing the aff to operate as the imposition of a single truth rather than being questioned---that comes before the case because you have no way of determining whether the 1AC was correct without an effective negative response---vote neg on presumption

Morson 4 – Greg Morson, Professor at Northwestern University, Bakhtinian Perspectives on Language, Literacy, and Learning, 317-23

Authoritative words in their fully expressed form purport to offer an alibi. They say, like Dostoevsky’s Grand Inquisitor: we speak the truth and you need not question, only obey, for your conscience to be at rest. Yet, every authoritative word is spoken or heard in a milieu of difference. It may try to insulate itself from dialogue with reverential tones, a special script, and all the other signs of the authority fused to it, but at the margins¶ 319¶ dialogue waits with a challenge: you may be right, but you have to convince me. Once the authoritative word responds to that challenge, it ceases to be fully authoritative. To be sure, it may still command considerable deference by virtue of its past, its moral aura, and its omnipresence. But it has ceased to be free from dialogue and its authority has changed from unquestioned to dialogically tested. Every educator crosses this line when he or she gives reasons for a truth. ¶ My daughter once had a math teacher who, when asked why a certain procedure was used to solve an equation, would reply, “because some old, dead guy said so.” Of course, no answer could be further from the spirit of mathematics, where logic counts for everything and authority for nothing. Nobody proves the Pythagorean theorem by saying Pythagoras said so. Compare this reply with actually showing the logic of a procedure so the student understands the “why.” In that case, one immediately admits that there must be a good reason for proceeding in a certain way, and that it needs to be shown. The procedure does not end up as less sure because of this questioning; quite the contrary. Rather, questioning is seen as intrinsic to mathematics itself, which enjoys its authority precisely because it has survived such questioning. ¶ Even in fields that do not admit of mathematical proof, an authoritative word does not necessarily lose all authority when questioning enters into it. We can give no mathematically sure reason why democracy is preferable to dictatorship or market economies are generally more productive than command economies. But we can give reasons, which admit the possibilities of challenges we had not foreseen and may have to think about. Education and all inquiry are fundamentally different when the need for reasons is acknowledged and when questioning becomes part of the process of learning. Truth becomes dialogically tested and forever testable. ¶ In short, authoritative words may or may not be authoritarian. In the Soviet Union, authoritarian words were the norm and questioning was seen as suspect. One no more questioned Marxism-Leninism than one questioned the law of gravity (a common comparison, suggesting that each was equally sure). What the Party said was right because it was the outcome of sure historical laws guaranteeing the correctness of its rulings. Education reflected this spirit. Bakhtin’s embrace of dialogue, then, challenged not so much the economic or historical theories the regime propounded, but its very concept of truth and the language of truth it embraced. Dialogue by its very nature invites questioning, thrives on it, demands it. ¶ It follows from Bakhtin’s argument that nonauthoritarian authoritative words are not necessarily weaker than authoritarian ones. After all, one may believe something all the more because one has questioned it, provided that defenders have been willing to answer and have been more or less cogent in their defense. They need not answer all objections perfectly – we are often convinced with qualifications, with a “just in case,” with “loopholes.”¶ 320¶ However, they must demonstrate that the authority is based on generally sound reasons. Morever, for many, enormous persuasive power lies in the very fact that the authoritative belief is so widely held. Everyone speaks it, even if with ironizing quotation marks. ¶ An authoritative word of this nonauthoritarian kind functions not as a voice speaking the Truth, but as a voice speaking the one point of view that must be attended to. It may be contested, rejected, or modified, the way in which church dogmas are modified over time by believers, but it cannot be ignored. Think of Huck Finn (discussed by Mark Dressman, this volume). Even when he cannot bring himself to turn in Jim as a runaway slave, he accepts the authority of the social voice telling him that such an action would be right. He does not question that voice, just realizes he will not follow it and will do “wrong.” Much of the moral complexity of this book lies in Huck’s self-questioning, as he does what we believe to be right but what he thinks of as wrong; and if we read this book sensitively, we may ask ourselves how much of our own behavior is Huckish in this respect. Perhaps our failure to live up to our ideals bespeaks our intuition without overt expression that there is something wrong with those ideals. What Huck demonstrates is that there may be a wisdom, even a belief system, in behavior itself: we always know more than we know, and our moral sensitivity may be different from, and wiser than, our professed beliefs. ¶ our own authoritative words ¶ The basic power of an authoritative voice comes from its status as the one that everyone hears. Everyone has heard that democracy is good and apartheid is bad, that the environment needs preserving, that church must not be merged with state; and people who spend their lives in an academic environment may add many more to the list. In our academic subculture, we are, almost all of us, persuaded of the rightness of greater economic equality, of plans for inclusion and affirmative action, of abortion rights, of peace, of greater efforts to reach out to all the people in the world in all their amazing diversity. These are our authoritative voices, and , too, we may accept either because they are simply not to be questioned or because we have sought out intelligent opponents who have questioned them and have thought about, if not ultimately accepted, their answers. Again, educators know the moment when a student from a background different from ours questions one of our beliefs and we experience the temptation to reply like that math teacher. Thinking of ourselves as oppositional, we often forget that we, too, have our own authoritative discourse and must work to remember that, in a world of difference, authority may not extend to those unlike us. ¶ The testable authoritative voice: we hear it always, and though some may disagree with it, they cannot ignore it. Its nonauthoritarian power is based¶ 321¶ above all on its ubiquity. In a society that is relatively open to diverse values, that minimal, but still significant, function of an authoritative voice is the most important one. It demands not adherence but attention. And such a voice is likely to survive far longer than an authoritarian voice whose rejection is necessarily its destruction. We have all these accounts of Soviet dissidents – say, Solzhenitsyn – who tell their story as a “narrative of rethinking” (to use Christian Knoeller’s phrase): they once believed in Communist ideology, but events caused them to raise some questions that by their nature could not be publicly voiced, and that silence itself proved most telling. You can hear silence if it follows a pistol shot. If silence does not succeed in ending private questioning, the word that silence defends is decisively weakened. The story of Soviet dissidents is typically one in which, at some point, questioning moved from a private, furtive activity accompanied by guilt to the opposite extreme, a clear rejection in which the authoritative voice lost all hold altogether. Vulnerability accompanies too much power. ¶ But in more open societies, and in healthier kinds of individual development, an authoritative voice of the whole society, or of a particular community (like our own academic community), still sounds, still speaks to us in our minds. In fact, we commonly see that people who have questioned and rejected an authoritative voice find that it survives within them as a possible alternative, like the minority opinion in a court decision. When they are older, they discover that experience has vindicated some part of what they had summarily rejected. Perhaps the authoritative voice had more to it than we thought when young? Now that we are teachers, perhaps we see some of the reasons for practices we objected to? Can we, then, combine in a new practice both the practices of our teachers and the new insights we have had? When we do, a flexible authoritative word emerges, one that has become to a great extent an innerly persuasive one. By a lengthy process, the word has, with many changes, become our own, and our own word has in the process acquired the intonations of authority. ¶ In much the same way, we react to the advice of our parents. At some point it may seem dated, no more than what an earlier generation unfortunately thought, or we may greet it with the sign of regret that our parents have forgotten what they experienced when our age. However, the dialogue goes on. At a later point, we may say, you know, there was wisdom in what our parents said, only why did they express it so badly? If only I had known! We may even come to the point where we express some modified form of parental wisdom in a convincing voice. We translate it into our own idiolect, confident that we will not make the mistakes of our parents when we talk to our children. Then our children listen, and find our own idiolect, to which we have devoted such painful ideological and verbal work, hopelessly dated, and the process may start again. ¶ It is always a difficult moment when we realize that our own voice is now the authority, especially because we have made it different, persuasive in its¶ 322¶ own terms, not like our parents’ voice. When we reflect on how our children see us, we may even realize that our parents’ authoritative words may not have been the product of blind acceptance, but the result of a process much like our own. They may have done the same thing we did – question, reject, adapt, arrive at a new version – and that rigid voice of authority we heard from them was partly in our own ears. Can we somehow convey to our students our own words so they do not sound so rigid? We all think we can. But so did our parents (and other authorities).¶ Dialogue, Laughter, And Surprise ¶ Bakhtin viewed the whole process of “ideological” (in the sense of ideas and values, however unsystematic) development as an endless dialogue. As teachers, we find it difficult to avoid a voice of authority, however much we may think of ours as the rebel’s voice, because our rebelliousness against society at large speaks in the authoritative voice of our subculture. We speak the language and thoughts of academic educators, even when we imagine we are speaking in no jargon at all, and that jargon, inaudible to us, sounds with all the overtones of authority to our students. We are so prone to think of ourselves as fighting oppression that it takes some work to realize that we ourselves may be felt as oppressive and overbearing, and that our own voice may provoke the same reactions that we feel when we hear an authoritative voice with which we disagree. ¶ So it is often helpful to think back on the great authoritative oppressors and reconstruct their self-image: helpful, but often painful. I remember, many years ago, when, as a recent student rebel and activist, I taught a course on “The Theme of the Rebel” and discovered, to my considerable chagrin, that many of the great rebels of history were the very same people as the great oppressors. There is a famous exchange between Erasmus and Luther, who hoped to bring the great Dutch humanist over to the Reformation, but Erasmus kept asking Luther how he could be so certain of so many doctrinal points. We must accept a few things to be Christians at all, Erasmus wrote, but surely beyond that there must be room for us highly fallible beings to disagree. Luther would have none of such tentativeness. He knew, he was sure. The Protestant rebels were, for a while, far more intolerant than their orthodox opponents. Often enough, the oppressors are the ones who present themselves and really think of themselves as liberators. Certainty that one knows the root cause of evil: isn’t that itself often the root cause? ¶ We know from Tsar Ivan the Terrible’s letters denouncing Prince Kurbsky, a general who escaped to Poland, that Ivan saw himself as someone who had been oppressed by noblemen as a child and pictured himself as the great rebel against traditional authority when he killed masses of people or destroyed whole towns. There is something in the nature of maximal rebellion against authority that produces ever greater intolerance, unless one is very careful. ¶ 323¶ For the skills of fighting or refuting an oppressive power are not those of openness, self-skepticism, or real dialogue. In preparing for my course, I remember my dismay at reading Hitler’s Mein Kampf and discovering that his self-consciousness was precisely that of the rebel speaking in the name of oppressed Germans, and that much of his amazing appeal – otherwise so inexplicable – was to the German sense that they were rebelling victims. In our time, the Serbian Communist and nationalist leader Slobodan Milosevic exploited much the same appeal. Bakhtin surely knew that Communist totalitarianism, the Gulag, and the unprecedented censorship were constructed by rebels who had come to power. His favorite writer, Dostoevsky, used to emphasize that the worst oppression comes from those who, with the rebellious psychology of “the insulted and humiliated,” have seized power – unless they have somehow cultivated the value of dialogue, as Lenin surely had not, but which Eva, in the essay by Knoeller about teaching The Autobiography of Malcolm X, surely had. ¶ Rebels often make the worst tyrants because their word, the voice they hear in their consciousness, has borrowed something crucial from the authoritative word it opposed, and perhaps exaggerated it: the aura of righteous authority. If one’s ideological becoming is understood as a struggle in which one has at last achieved the truth, one is likely to want to impose that truth with maximal authority; and rebels of the next generation may proceed in much the same way, in an ongoing spiral of intolerance. By contrast, if one’s rebellion against an authoritative word is truly dialogic, that is unlikely to happen, or to be subject to more of a self-check if it does. Then one questions one’s own certainties and invites skepticism, lest one become what one has opposed. One may even step back and laugh at oneself. ¶ Laughter at oneself invites the perspective of the other. Laughter is implicitly pluralist. Instead of looking at one’s opponents as the unconditionally wrong, one imagines how one sounds to them. Regarding earlier authorities, one thinks: that voice of authority, it is not my voice, but perhaps it has something to say, however wrongly put. It comes from a specific experience, which I must understand. I will correct it, but to do that I must measure it, test it, against my own experience. Dialogue is a process of real testing, and one of the characteristics of a genuine test is that the result is not guaranteed. It may turn out that sometimes the voice of earlier authority turns out to be right on some point. Well, we will incorporate that much into our own “innerly persuasive voice.” Once one has done this, once one has allowed one’s own evolving convictions to be tested by experience and by other convictions, then one may allow the dialogue to continue.

#### Fallibility---even if the 1AC is factually correct, failure to subject their claims to testing by a well-prepared opponent produces groupthink that prevents effective advocacy – treat their claims as false until properly tested. Debating hypothetical consequences teaches political judgment---learning to deal with unintended consequences and refining judgment through debate improves advocacy

Bourke 9 – Professor of History @ Queen Mary (Richard, Raymond Guess, “Political Judgment,” p. 6-7)

Politics will always happen where human societies interact and struggle, and social life will always require the activity of judgement. A historical understanding of political action, and the judgments of value that accompany it, is forced to proceed in the absence of guiding norms or determinate concepts. Political judgement may not be a constant mayhem of disorientation and confusion, but neither is it an activity of applying rules or ascertaining norms. Diagnosing an error or thoughtfully avoiding a clearly discerned cul-de-sac is not tantamount to having a firm grasp on the “the truth” or a comprehensive map of the terrain that we inhabit. John Dunn has consistently pressed the question of how such practical judgements relate to wider theoretical claims about politics. The papers collected in this volume ere written by historians, philosophers, and political scientists who have been in owe way or another inspired by the perspectives Dunn’s work has opened up. They are all centered in various way s on the question of what political judgement is, and what the prospects are for our coming to an understanding of it that might enable us to enlighten our own political practice.

#### The first section of the volume, comprising chapters by Raymond Geuss, by Victoria McGeer and Philip Pettit, and by Richard Bourke, deals with general issues about the nature of political judgement. Geuss begins by discussing what it might mean to construe “judgement” not on the model of a human individual who entertains and then affirm or denies a proposition, but rather as a kind of action which is always located in a social, usually an institutional context. His aim is to show how attempts to construe political judgement in the traditional terms of epistemology are bound to miscarry. The peculiar nature of the kinds of practical imagination involved in the formation of even the most straightforward political judgements ought to encourage us to consider political reasoning on its own terms, rather than as some sort of beleaguered extension of human reasoning as such. McGeer and Pettit, in chapter 2, examine how a focused analysis of the ways in which judgements are actually produced might help to improve its flexibility and reduce its pathological results. They underline the psychological vulnerability of human cognitive powers, and indicate how some of the perils of perception, particularly its in-built dogmatism and tendency towards inertia, are paralleled by problems associate with judgement. Judgement is in this sense resistant to change. How, McGeer and Pettit ask, can it be rendered comparatively open to innovation? They explore the idea that the techniques of rhetoric may have a useful cognitive role to play in freeing up dogmatism of judgement, enabling people to entertain alternative perspectives. Political innovation must aim at practical improvement. It is not some kind of inspired inventiveness, an idle search for a new style. It requires a sense of the stakes involved in seeking progressive change, an appreciation of the gravity of affairs. The flexibility needed in judging possible change requires a grasp of the significance of change. It depends on imagination and the cultivation of historical sense. It depends on the capacity to imagine the motivational force driving one’s opponents political values, an ability to conceive what is not present in one’s own experience. Political judgement is therefore dedicated to imagining the world as it might be, but it must also be adept at assessing practical consequences as they would obtain in that hypothetical situation. In this sense it is a form of historical judgement. Richard Bourke addressed some of the issues that arise form taking seriously the claim that judgement is a *historically* located phenomenon, and the relation between the explanatory and justificatory ambitions of theories of judgement. The distinction between explaining and justifying political action has traditionally been rendered in terms of the difference between historical and philosophical approaches to politics. Taken together, the first three chapters in this collection illustrate how these distinct sense of what practical affairs involves affec Even if they win all of their arguments, reading a new non-topical Aff without disclosing it before the round is a voting issue---it crushes all their defense to fairness and testing because there’s no time for pre-round prep and it proves that they’ve agreed to the concept of debate as a game because they strategically choose when to disclose and not based on competitive drivers---the interpretation of allowing non-topical affs but requiring them to be disclosed solves their offense

t how the role of judgement in politics is evaluated and analyzed.

Disclosure

#### Even if they win all of their arguments, reading a new non-topical Aff without disclosing it before the round is a voting issue---it crushes all their defense to fairness and testing because there’s no time for pre-round prep and it proves that they’ve agreed to the concept of debate as a game because they strategically choose when to disclose and not based on competitive drivers---the interpretation of allowing non-topical affs but requiring them to be disclosed solves their offense

### Testing---A2: Predictability Bad

#### Breaking down predictability is self-defeating and impossible---pure creativity requires the existence of constraints--- retaining some degree of predictability enables creativity within those constraints without pre-scripting every debate

Paul Armstrong 2k, Professor of English and Dean of the College of Arts and Sciences at the State University of New York at Stony Brook, Winter 2000, “The Politics of Play: The Social Implications of Iser's Aesthetic Theory,” New Literary History, Vol. 31, No. 1, p. 211-223

Such a play-space also opposes the notion that the only alternative to the coerciveness of consensus must be to advocate the sublime powers of rule-breaking. 8 Iser shares Lyotard's concern that to privilege harmony and agreement in a world of heterogeneous language games is to limit their play and to inhibit semantic innovation and the creation of new games. Lyotard's endorsement of the "sublime"--the pursuit of the "unpresentable" by rebelling against restrictions, defying norms, and smashing the limits of existing paradigms--is undermined by contradictions, however, which Iser's explication of play recognizes and addresses. The paradox of the unpresentable, as Lyotard acknowledges, is that it can only be manifested through a game of representation. The sublime is, consequently, in Iser's sense, an instance of doubling. If violating norms creates new games, this crossing of boundaries depends on and carries in its wake the conventions and structures it oversteps. The sublime may be uncompromising, asocial, and unwilling to be bound by limits, but its pursuit of what is not contained in any order or system makes it dependent on the forms it opposes. [End Page 220]

The radical presumption of the sublime is not only terroristic in refusing to recognize the claims of other games whose rules it declines to limit itself by. It is also naive and self-destructive in its impossible imagining that it can do without the others it opposes. As a structure of doubling, the sublime pursuit of the unpresentable requires a play-space that includes other, less radical games with which it can interact. Such conditions of exchange would be provided by the nonconsensual reciprocity of Iserian play.

Iser's notion of play offers a way of conceptualizing power which acknowledges the necessity and force of disciplinary constraints without seeing them as unequivocally coercive and determining. The contradictory combination of restriction and openness in how play deploys power is evident in Iser's analysis of "regulatory" and "aleatory" rules. Even the regulatory rules, which set down the conditions participants submit to in order to play a game, "permit a certain range of combinations while also establishing a code of possible play. . . . Since these rules limit the text game without producing it, they are regulatory but not prescriptive. They do no more than set the aleatory in motion, and the aleatory rule differs from the regulatory in that it has no code of its own" (FI 273). Submitting to the discipline of regulatory restrictions is both constraining and enabling because it makes possible certain kinds of interaction that the rules cannot completely predict or prescribe in advance. Hence the existence of aleatory rules that are not codified as part of the game itself but are the variable customs, procedures, and practices for playing it. Expert facility with aleatory rules marks the difference, for example, between someone who just knows the rules of a game and another who really knows how to play it. Aleatory rules are more flexible and open-ended and more susceptible to variation than regulatory rules, but they too are characterized by a contradictory combination of constraint and possibility, limitation and unpredictability, discipline and spontaneity.

#### Strict limits *enable* creativity. Beauty emerges from identifying constraints and working within them.

Flood 10 (Scott, BS in Communication and Theatre Arts – St. Joseph’s College, School Board Member – Plainfield Community School Corporation, and Advertising Agent, “Business Innovation – Real Creativity Happens Inside the Box”, http://ezinearticles.com/?Business-Innovation---Real-Creativity-Happens-Inside-the-Box&id=4793692)

It seems that we can accomplish anything if we're brave enough to step out of that bad, bad box, and thinking "creatively" has come to be synonymous with ignoring rules and constraints or pretending they just don't exist. Nonsense. Real creativity is put to the test within the box. In fact, that's where it really shines. It might surprise you, but it's actually easier to think outside the box than within its confines. How can that be? It's simple. When you're working outside the box, you don't face rules, or boundaries, or assumptions. You create your own as you go along. If you want to throw convention aside, you can do it. If you want to throw proven practices out the window, have at it. You have the freedom to create your own world. Now, I'm not saying there's anything wrong with thinking outside the box. At times, it's absolutely essential - such as when you're facing the biggest oil spill in history in an environment in which all the known approaches are failing. But most of us don't have the luxury of being able to operate outside the box. We've been shoved into reality, facing a variety of limitations, from budgets, to supervisors' opinions and prejudices, to the nature of the marketplace. Even though the box may have been given a bad name, it's where most of us have to spend our time. And no matter how much we may fret about those limits, inside that box is where we need to prove ourselves. If you'll pardon the inevitable sports analogy, consider a baseball player who belts ball after ball over 450 feet. Unfortunately, he has a wee problem: he can't place those hits between the foul lines, so they're harmful strikes instead of game-winning home runs. To the out-of-the-box advocates, he's a mighty slugger who deserves admiration, but to his teammates and the fans, he's a loser who just can't get on base. He may not like the fact that he has to limit his hits to between the foul poles, but that's one of the realities of the game he chose to play. The same is true of ideas and approaches. The most dazzling and impressive tactic is essentially useless if it doesn't offer a practical, realistic way to address the need or application. Like the baseball player, we may not like the realities, but we have to operate within their limits. Often, I've seen people blame the box for their inability or unwillingness to create something workable. For example, back in my ad agency days, I remember fellow writers and designers complaining about the limitations of projects. If it was a half-page ad, they didn't feel they could truly be creative unless the space was expanded to a full page. If they were given a full page, they demanded a spread. Handed a spread, they'd fret because it wasn't a TV commercial. If the project became a TV commercial with a $25,000 budget, they'd grouse about not having a $50,000 budget. Yet the greatest artists of all time didn't complain about what they didn't have; they worked their magic using what they did. Monet captured the grace and beauty of France astonishingly well within the bounds of a canvas. Donatello exposed the breathtaking emotion that lurked within ordinary chunks of marble. And I doubt that Beethoven ever whined because there were only 88 keys on the piano. Similarly, I've watched the best of my peers do amazing things in less-than-favorable circumstances. There were brilliant commercials developed with minimal budgets and hand-held cameras. Black-and-white ads that outperformed their colorful competitors. Simple postcards that grabbed the attention of (and business from) jaded consumers. You see, real creativity isn't hampered or blocked by limits. It actually flowers in response to challenges. Even though it may be forced to remain inside the box, it leverages everything it can find in that box and makes the most of every bit of it. Real creativity is driven by a need to create. When Monet approached a blank canvas, it's safe to say that he didn't agonize over its size. He wanted to capture something he'd seen and share how it looked through his eyes. The size of the canvas was incidental to his talent and desire. Think about the Apollo 13 mission. NASA didn't have the luxury of flying supplies or extra tools to the crew. They couldn't rewrite the laws of physics. Plus, they faced a rapidly shrinking timeline, so their box kept getting smaller and less forgiving. And yet they arrived upon a solution that was creative; more important, that was successful. The next time someone tells you that the real solution involves stepping outside the box, challenge him or her to think and work harder. After all, the best solution may very well be lurking in a corner of that familiar box.

#### They fall back on all the stuff they criticize – their aff isn’t radical, but a predictable script that’s been repeated for 30 years in the academy – failure to accept constrains on discussion turns their offense because we cannot meaningfully contest power

Ruti 15 – Ruti, professor of Critical Theory at the University of Toronto, ‘15

(Mari, Between Levinas and Lacan: Self, Other, Ethics, Bloomsbury Publishing, pg. 180-184)

In Chapter 2, I pointed out that Butler's attempt to have it both ways—**to denounce the Enlightenment while simultaneously using its resources**—leads to conceptual contradictions that cannot easily be resolved. The matter is worth revisiting here in greater detail because it highlights my major disagreement with Butler, namely that her wholesale vilification of autonomy reaches the kinds of hyperbolic ideological heights that cannot be theoretically defended. Indeed, **it is in part** the predictability of Butler's stance **on this issue that explains why I have been so critical of her in this book:** that I always know ahead of time how the argument is going to go—autonomy, sovereignty, rationality, normative limits bad; antinormativity, no matter how far-fetched, good—makes me feel the same way I do when I am grading yet another graduate student paper that undertakes the task of "deconstructing" the humanist subject. In the latter instance, it takes all the pedagogical willpower I can conjure up to not write in the margin, "Didn't we already do this circa 1975?" In Butler's case, I suppose I would like some explanation for why the monotonous disparagement of autonomy and related concepts is so important to her.

"This question is worth asking because the problematic of the subject—the question of the proper way to theorize the relationship between autonomy and subjection, agency and abjection, accountability and social determination—has been one of the most divisive issues of contemporary theory. I have already outlined my own position, which is that **either-or solutions to this problematic are** too one-dimensional, that if human beings are not entirely autonomous, they are not entirely subjected either, which is why we need to theorize both poles of the dichotomy simultaneously. This, refreshingly, is what Allen tries to do, which is one reason I have found her arguments so convincing. Allen explains that her goal "is to offer an analysis of power in all its depth and complexity, including an analysis of subjection that explicates how power works at the intrasubjective level to shape and constitute our very subjectivity, and an account of autonomy that captures the constituted subject's capacity for critical reflection and self-transformation, its capacity to be self-constituting" (PS 2-3). Without an account of subjection, Allen adds, critical theory cannot grasp "the real-world relations of power and subordination along lines of gender, race, and sexuality that it must illuminate if it is to be truly critical**"; but without a satisfactory account of autonomy, critical theory "**cannot envision possible paths of social transformation**"** {PS 3). This is why it is important to understand how we can be constituted by power **yet capable of constituting ourselves**, **how we can be limited by our social context yet capable of critical reflection and self-transformation beyond this context**.

Undoubtedly even our capacity for critical reflection and self-transformation is socially constituted, so that it would be possible to posit—with Zizek—**that this capacity merely renders our subordination more livable.** In Zizek's skeptical reading (and this is a possibility I touched on in Chapter 4), **what the system *wants* is** precisely that we rebel against it—that we strive for the kind of self transformation that gives us the illusion of being able to distance ourselves from it—because, in the final analysis, our attempts to defy its power **merely** consolidate this power; as Zizek maintains, in one of his more Foucaultian moments, power thrives on our action of disidentification because it "can reproduce itself only through some form of self-distance, **by relying on the obscene disavowed rules and practices that are in conflict with its public norms.**"2 Yet it is also the case—as Zizek himself repeatedly stresses—that without the capacity for critical reflection and self-transformation our relationship to the big Other would be one of utter subjection.

### A2: You Have Ground

#### “Some ground” isn’t enough---teams always have something to say; we could prepare Wipeout and Schlag and it would apply to nearly all Affs, but it isn’t high quality or reasonably specific---that undermines fairness because they’re structurally locked into winning position and it denies rigorous clash that is required for testing

#### Ground isn’t useful unless it’s predictable---all the arguments they named are great, but require research to produce and present in a manner that effectively represents the position in order to challenge their claims---that’s much harder if the topic for the debate is extremely broad or entirely unknown until the start of the debate

# 1NR

# Neg Vs New K Aff

## Case 1NR

### presumption

#### Vote NEG on presumption:

#### 1 – inherency’s a burden of proof – they already performed – NO reason ballot is key

#### 2 – turns case – symbolically affirming their method despite its disconnection from the material ONLY strengthens the logistical forces they’re trying to resist

Extend Rigakos and Law 9

### Political engagement good

#### Political engagement can change the terrain and enact meaningful local improvements, despite overarching systems – this means WE in debate are able to create solutions outside our realm to make substantial changes in the lives of BIPOC – antitrust exists outside of government – and has impacts on BIPOC – (capitalism, etc) Aff didn’t sayt his but there is a link to BIPOC’s state, to ignore it, subsists a global system of racism, exploitation, particularity of the global south, and BIPOC nationally

#### Demands on the government can move the political center and alter mutable societal attitudes. Their politics ensure the world stays the same. – the aff doesn’t change the systemic issues (created by antitrust) created to subsist a racist system – they said, antrust doesn’t harm bipoc, but antitrust is a private x public system, and to ignore the system that creates the system that creates housing disenfranchisement – antrust and symptoms like housing tht directly affects BIPOC are inevitabily connected… intersectionality of systemic issues – issues like housing r symptoms to a global issue. Glaude 16

#### Demands on the government can move the political center and alter mutable societal attitudes.Their politics ensure the world stays the same.

**Glaude 16 – Dr. Eddie S. Glaude, Professor of African American Studies and Religion at Princeton University, PhD in Religion from Princeton University, MA in African-American Studies from Temple University and MA in Religion from Princeton University, Democracy in Black: How Race Still Enslaves, p. 185-197**

**But Goldwater failed to realize that governmental indifference can harden hearts, and government action can create conditions that soften them. People's attitudes aren't static or untouchable. They are molded by the quality of interactions with others, and one of the great powers of government involves shaping those interactions-not determining them in any concrete sense, but defining the parameters within which people come to know each other and live together. Today, for example, most Americans don't believe women should be confined to the home raising children, or subjected to crude advances and sexist remarks by men. The women's-rights movement put pressure on the government, which in turn passed laws that helped change some of our beliefs about women. Similarly, the relative progress of the 1960s did not happen merely by using the blunt instruments of the law. Change emerged from the ways those laws, with grassroots pressure, created new patterns of interactions, and ultimately new habits. Neither Obama's election to the presidency nor my appointment as a Princeton professor would have happened were it not for these new patterns and habits.**

**None of this happens overnight. It takes time and increasing vigilance to protect and secure change. I was talking with a dose friend and he mentioned a basic fact: that we were only fifteen years removed from the passage of the Voting Rights Act of 1965 whenRonald Reagan was elected president and Republicans began to dismantle the gains of the black freedom struggle. Civil rights legislation and the policies of the Great Society had just started to reshape our interactions when they started to be rolled back. We barely had a chance to imagine America anew-to pursue what full employment might look like, to let the abolition of the death penalty settle in, to question seriously the morality of putting people in prison cells, and to enact policies that would undo what the 1968 Kerner Commission described as "two Americas"­ before the attack on "big government" or, more precisely, the attack on racial equality was launched. The objective was to shrink the size of government ("to starve the beast") and to limit its domestic responsibilities to ensuring economic efficiency and national defense. Democrats eventually buckled, and this is the view of government, no matter who is in office, that we have today. It has become a kind of touchstone of faith among most Americans that government is wasteful and should be limited in its role-that it shouldn't intrude on our lives. Politicians aren't the only ones who hold this view. Many Americans do, too. Now we can't even imagine serious talk of things like full employment or the abolition of prisons.**

**We have to change our view of government, especially when it comes to racial matters. Government policy ensured the vote for African Americans and dismantled legal segregation. Policy established a social safety net for the poor and elderly; it put in place the conditions for the growth of our cities. All of this didn't happen simply because of individual will or thanks to some abstract idea of America. It was tied up with our demands and expectations. Goldwater was wrong. So was Reagan. And, in many ways, so is Obama. Our racial habits are shaped by the kind of society in which we live, and our government plays a big role in shaping that society. As young children, our community offers us a way of seeing the world; it lets us know what is valuable and sacred, and what stands as virtuous behavior and what does not. When Michael Brown's body was left in the street for more than four hours, it sent a dear message about the value of black lives. When everything in our society says that we should be less concerned about black folk, that they are dangerous, that no specific policies can address their misery, we say to our children and to everyone else that these people are "less than"-that they fall outside of our moral concern. We say, without using the word, that they are niggers.**

**One way to change that view is to enact policies that suggest otherwise. Or, to put it another way, to change our view of government, we must change our demands of government. For example, for the past fifty years African American unemployment has been twice that of white unemployment. The 2013 unemployment rate for African Americans stood at 13.1 percent, the highest annual black unemployment rate in more than seventy years. Social scientists do not generally agree on the causes of this trend. Some attribute it to the fact that African Americans are typically the "last hired and first fired." Others point to changes in the nature of the economy; still others point to overt racial discrimination in the labor market. No matter how we account for the numbers, the fact remains that most Americans see double-digit black unemployment as "normal." However, a large-scale, comprehensive jobs agenda with a living wage designed to put Americans, and explicitly African Americans, to work would go a long way toward uprooting the racial habits that inform such a view. It would counter the nonsense that currently stands as a reason for long-term black unemployment in public debate: black folk are lazy and don't want to work.**

**If we hold the view that government plays a crucial role in ensuring the public good-if we believe that all Americans, no matter their race or class, can be vital contributors to our beloved community-then we reject the idea thatsome populations are disposable, that some people can languish in the shadows while the rest of us dance in the light. The question ''Am I my brother's or my sister's keeper?" is not just a question for the individual or a mantra to motivate the private sector. It is a question answered in the social arrangements that aim to secure the goods and values we most cherish as a community. In other words, we need an idea of government that reflects the value of all Americans, not just white Americans or a few people with a lot of money.**

**We need government seriously committed to racial justice. As a nation, we can never pat ourselves on the back about racial matters. We have too much blood on our hands. Remembering that fact-our inheritance, as Wendell Berry said-does not amount to beating ourselves over the head, or wallowing in guilt, or trading in race cards. Remembering our national sins serves as a check and balance against national hubris. We're reminded of what we are capable of, and our eyes are trained to see that ugliness when it rears its head. But when we disremember-when we forget about the horrors of lynching, lose sight of how African Americans were locked into a dual labor market because of explicit racism, or ignore how we exported our racism around the world-we free ourselves from any sense of accountability. Concern for others and a sense of responsibility for the whole no longer matter. Cruelty and indifference become our calling cards.**

**We have to isolate those areas in which long-standing trends of racial inequality short-circuit the life chances of African Americans. In addition to a jobs agenda, we need a comprehensive government response to the problems of public education and mass incarceration. And I do mean a government response. Private interests have overrun both areas, as privatization drives school reform (and the education of our children is lost in the boisterous battles between teachers' unions and private interests) and as big business makes enormous profits from the warehousing of black and brown people in prisons. Let's be clear: private interests or market-based strategies will not solve the problems we face as a country or bring about the kind of society we need. We have to push for massive government investment in early childhood education and in shifting the center of gravity of our society from punishment to restorative justice. We can begin to enact the latter reform by putting an end to the practice of jailing children. Full stop. We didn't jail children in the past. We don't need to now.**

**In sum, government can help us go a long way toward uprooting racial habits with policies that support jobs with a living wage, which would help wipe out the historic double-digit gap between white and black unemployment; take an expansive approach to early childhood education, which social science research consistently says profoundly affects the life chances of black children; and dismantle the prison-industrial complex. We can no longer believe that disproportionately locking up black men and women constitutes an answer to social ills.**

**This view of government cannot be dismissed as a naive pipe dream, because political considerations relentlessly attack our political imaginations and limit us to the status quo. We are told before we even open our mouths that this particular view won't work or that it will never see the light of day. We've heard enough of that around single payer health care reform and other progressive policies over the Obama years. Such defeatist attitudes conspire to limit our imaginations and make sure that the world stays as it is. But those of us who don't give a damn about the rules of the current political game must courageously organize, advocate, and insist on the moral and political significance of a more robust role for government. We have to change the terms of political debate.**

**Something dramatic has to happen. American democracy has to be remade. John Dewey, the American philosopher, understood this:**

**The very idea of democracy, the meaning of democracy, must be continually explored afresh; it has to be constantly discovered and rediscovered, remade and reorganized; while the political and economic and social institutions in which it is embodied have to be remade and reorganized to meet the changes that are going on in the development of new needs on the part of human beings and new resources for satisfying these needs.**

**Dewey saw American democracy as an unfinished project. He knew that the aims and purposes of this country were not fixed forever in the founding documents, but the particular challenges of our moment required imaginative leapson behalf of democracy itself. Otherwise, undemocratic forces might prevail; tyranny in the form of the almighty dollar and the relentless pursuit of it might overtake any commitment to the idea of the public good; and bad habits might diminish our moral imaginations.**

**The remaking of America will not happen inside the Beltway. Too many there have too much invested in the status quo. A more robust idea of government will not emerge from the current political parties. Both are beholden to big money. Substantive change will have to come from us. Or, as the great civil rights leader Ella Baker said, "we are the leaders we've been looking for"-a model of leadership that scares the hell out of the Reverend Sharpton. We will have to challenge the status quo in the streets and at the ballot box. In short, it will take a full-blown democratic awakening to enact this revolution.**

#### The state and the law are inevitable. Shouldn’t wish it away, but learn to work within it.

**Eckersley 4**

**Robyn, Reader/Associate Professor in the Department of Political Science at the University of Melbourne, “The Green State: Rethinking Democracy and Sovereignty”, MIT Press, 2004, Google Books, pp. 3-8**

**While acknowledging the basis for this antipathy toward the nation- state, and the limitations of state-centric analyses of global ecological degradation, I seek to draw attention to the positive role that states have played, and might increasingly play, in global and domestic politics. Writing more than twenty years ago, Hedley Bull (a proto-constructivist and leading writer in the English school) outlined the state's positive role in world affairs, and his argumentscontinue to provide a powerful challenge to those who somehow seek to "get beyond the state," as if such a move would provide a more lasting solution to the threat of armed conflict or nuclear war, social and economic injustice, or environmental degradation.10 As Bull argued, given thatthe state is here to stay whether we like it or not, then the call to get "beyond the state is a counsel of despair, at all events if it means that we have to begin by abolishing or subverting the state, rather than that there is a need to build upon it."" In any event, rejecting the "statist frame" of world politics ought not prohibit an inquiry into the emancipatory potential of the state as a crucial "node" in any future network of global ecological governance. This is especially so, given that one can expect states to persist as major sites of social and political power for at least the foreseeable future and that any green transformations of the present political order will, short of revolution, necessarily be state-dependent. Thus, like it or not, those concerned about ecological destruction must contend with existing institutions and, where possible, seek to "rebuild the ship while still at sea." And if states are so implicated in ecological destruction, then an inquiry into the potential for their transformation even their modest reform into something that is at least more conducive to ecological sustainability would seem to be compelling. Of course, it would be unhelpful to become singularly fixated on the redesign of the state at the expense of other institutions of governance. States are not the only institutions that limit, condition, shape, and direct political power, and it is necessary to keep in view the broader spectrum of formal and informal institutions of governance (e.g., local, national, regional, and international) that are implicated in global environmental change. Nonetheless, while the state constitutes only one modality ofpolitical power, it is an especially significant one because of its historical claims to exclusive rule over territory and peoples—as expressed in the principle of state sovereignty. As Gianfranco Poggi explains, the political power concentrated in the state "is a momentous, pervasive, critical phenomenon. Together with other forms of social power, it constitutes an indispensable medium for constructing and shaping larger social realities, for establishing, shaping and maintaining all broader and more durable collectivities."12 States play, in varying degrees, significant roles in structuring life chances, in distributing wealth, privilege, information, and risks, in upholding civil and political rights, and in securing private property rights and providing the legal/regulatory framework for capitalism. Every one of these dimensions of state activity has, for good or ill, a significant bearing on the global environmental crisis. Given that the green political project is one that demands far-reaching changes to both economies and societies, it is difficult to imagine how such changes might occur on the kind of scale that is needed without the active support of states. While it is often observed that states are too big to deal with local ecological problems and too small to deal with global ones, the state nonetheless holds, as Lennart Lundqvist puts it, "a unique position in the constitutive hierarchy from individuals through villages, regions and nations all the way to global organizations. The state is inclusive of lower political and administrative levels, and exclusive in speaking for its whole territory and population in relation to the outside world."13 In short, it seems to me inconceivable to advance ecological emancipation without also engaging with and seeking to transform state power. Of course, not all states are democratic states, and the green movement has long been wary of the coercive powers that all states reputedly enjoy. Coercion (and not democracy) is also central to Max Weber's classic sociological understanding of the state as "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory."14 Weber believed that the state could not be defined sociologically in terms of its ends\* only formally as an organization in terms of the particular means that are peculiar to it.15 Moreover his concept of legitimacy was merely concerned with whether rules were accepted by subjects as valid (for whatever reason); he did not offer a normative theory as to the circumstances when particular rules ought to be accepted or whether beliefs about the validity of rules were justified. Legitimacy was a contingent fact, and in view of his understanding of politics as a struggle for power in the context of an increasingly disenchanted world, likely to become an increasingly unstable achievement.16 In contrast to Weber, my approach to the state is explicitly normative and explicitly concerned with the purpose of states, and the democratic basis of their legitimacy. It focuses on the limitations of liberal normative theories of the state (and associated ideals of a just constitutional arrangement), and it proposes instead an alternative green theory that seeks to redress the deficiencies in liberal theory. Nor is my account as bleak as Weber's. The fact that states possess a monopoly of control over the means of coercion is a most serious matter, but it does not necessarilyimply that they must have frequent recourse to that power. In any event, whether the use of the state's coercive powers is to be deplored or welcomed turns on the purposes for which that power is exercised, the manner in which it is exercised, and whether it is managed in public, transparent, and accountable ways—a judgment that must be made against a background of changing problems, practices, and under- standings. The coercive arm of the state can be used to "bust" political demonstrations and invade privacy. It can also be used to prevent human rights abuses, curb the excesses of corporate power, and protect the environment. In short, although the political autonomy of states is widely believed to be in decline, there are still few social institution that can match the same degree of capacity and potential legitimacy that states have to redirect societies and economies along more ecologically sustainable lines to address ecological problems such as global warming and pollution, the buildup of toxic and nuclear wastes and the rapid erosion of the earth's biodiversity. States—particularly when they act collectively—have the capacity to curb the socially and ecologically harmful consequences of capitalism. They are also more amenable to democratization than cor- porations, notwithstanding the ascendancy of the neoliberal state in the increasingly competitive global economy. There are therefore many good reasons why green political theorists need to think not only critically but also constructively about the state and the state system. While the state is certainly not "healthy" at the present historical juncture, in this book I nonetheless join Poggi by offering "a timid two cheers for the old beast," at least as a potentially more significant ally in the green cause.17**

#### Legal engagement’s good, the aff risks violent fill-in

**McCluskey 8 – Martha T. McCluskey, Faculty Scholar and Professor at the State University of New York at Buffalo, “Book Review: Thinking with Wolves: Left Legal Theory After the Right's Rise Left Legalism/Left Critique”, Buffalo Law Review, 54 Buffalo L. Rev. 1191, January, Lexis**

**More generally, Left Legalism's examples of the failures of liberal law reforms may be evidence of the weakness of left politics as much as the weakness of left legalism. The equal treatment/special treatment dilemma that confronts feminist and anti-racist law reforms, for example, is not a natural (or supernatural) feature of equality law but instead is the product of a particular political strategy addressing inequality as a problem of individual irrational prejudice against "difference" rather than a problem of systemic subordination that produces, institutionalizes, and rationalizes certain "differences" as really and reasonably inferior. 376 Outside the United States, in some countries where equality movements - and legal scholars - have more widely adopted a left-leaning analysis of structural subordination, equality law has gone further to incorporate  [\*1275]  a disparate impact standard that can require the government to question and change this production and rationalization of difference. 377Link to the text of the note An impact-based equality rule can require the government to respond to "differences" of race, gender, and disability (for instance) not as "special" needs of a particular identity group but as normal and equal public benefits. 378**

**Indeed, anti-legalism among non-conservative legal scholars may reflect and reinforce not gutsy left politics but left political cowardice (or capitulation to right politics) given a political context in which advocating left law is less likely to be rewarded than challenging left law. 379Link to the text of the note It seems likely that non-conservative scholars will do more to advance right rather than left politics if, for example, they attribute liberal law's inadequacies in promoting racial justice to legalism in general rather than to particular legal rules (and particular political movements) that presume and protect white privilege. 380**

**[\*1276]  Finally, in amplifying the longstanding CLS (and neoliberal) argument that legal rights do not trump political interests, Left Legalism risks naturalizing political interests as somehow more independent, authentic, and determinate than legal rights. A critical left analysis should understand that those interests are not fixed, but are dynamically shaped by a variety of social and political factors including the law. From a critical perspective, judging the social and political impact of those interests is every bit as convoluted, unpredictable, and ideological as judging the impact of legal rights.**

**Kelman and Lester, for example, mythologize - and depoliticize - the process of formulating and contesting political interests when they complain that "left multiculturalists" threaten irrational and chaotic distributive politics by replacing careful measurement and balancing of "genuine" costs and benefits with ideological claims to "rights" based on disablity status. 381Link to the text of the note A Foucauldian insight that rights produce as well as reflect - or mask - interests and identities challenges not just the natural superiority and authenticity of legalistic rights but also the natural superiority and authenticity of political interests. In contrast to Kelman and Lester's analysis, for instance, sociolegal scholars David Engel and Frank Munger show the rich interdependence of legal rights, personal identity, and political interests in their study of persons negotiating identities as learning disabled. 382Link to the text of the note Engel and Munger conclude that even when formal rights-based claims are rarely invoked or weakly enforced, a liberal civil rights framework can serve to dramatically and meaningfully reconstruct ideas about individual capabilities and interests. 383**

**[\*1277]  Left law reform advocates, like those on the right, have often effectively used rights-based advocacy to change political interests and identification in circumstances where their political strength is insufficient to meaningfully secure or enforce those legal rights. For example, Martha Davis describes how welfare rights advocates have used international human rights claims to inspire, inform, and mobilize new political activism and coalitions even while recognizing that international law will have little or no binding impact on U.S. welfare policy in the near future. 384Link to the text of the note Similarly, right-wing campaigns against abortion, welfare, affirmative action, or gay rights, for example, may often be directed less at changing specific laws on these "cultural" issues and more at reshaping politics so that many working and middle class Americans sacrifice their economic interests (whether willingly or unwittingly) out of hopes or fears that more symbolic forms of status will offer better security. 385**

**2. Adding a Left Critique of Extra-Legal Innocence. Second, Left Legalism needs to go further to strip law's outside of its guise of essentialized innocence. Both left and right critics are right that law's power cannot be neatly contained by formal rules of law (liberal law reforms have unintended consequences that may be harmful and illiberal). But the same is true of any supposedly non-legalexercise of power, regardless of any assumed connection to market, divinity, social tradition, or radical transgression of any of the foregoing. That means that eschewing legalism is as illusory a route to moral (or anti-moralist) purity as embracing legalism.**

**Left Legalism tends to drift from its critical recognition that all law involves potentially dangerous power toward a wistful desire for liberalism's neutrality. The contributors  [\*1278]  often seem seduced by the neoliberal fantasy that an unregulated space of free, independent, and authentic individual subjectivity awaits those who reject liberal rights. 386Link to the text of the note When Halley criticizes feminist law reforms for engaging in moral regulation, she admits that this complaint "makes one sound like a libertarian." 387Link to the text of the note**

**Similarly, when Ford criticizes left and liberal "cultural rights" for exercising moral and political power, he tends to avoid the harder questions of which moral and political power is most justified. For example, he rejects a construction of racial equality that would include a right of workers to wear braided hair out of fear that such a right would constrain individuals' ability to define their own cultural identity. 388Link to the text of the note "Private institutions, in marked contrast to the state, with a very few exceptions, do not even attempt to provide such authoritative censorship and approval. When and if they do, they usually are met with equally legitimate competitors who censor and approve of different things." 389Link to the text of the note**

**From a critical perspective, state power and legal rights pervade these supposedly "private" institutions. And from a left perspective, the supposedly "private" spheres of workplace, church, family, plantation, housing market, health care system, and mass media - for just a few examples - historically have been deeply enmeshed in, constrained by, and productive of the same historical inequalities and coercive powers that pervade the state. If courts deny cultural rights to black workers who choose to wear cornrows, to consider Ford's example, they will likely recognize and enforce not individual freedom to define identity, but employers' rights, for example, to fire a white woman whose make-up is deemed insufficiently "feminine," or to fire a black woman whose un-straightened hair is deemed insufficiently "professional." And without unblinking faith in a fundamentally fair market, it seems  [\*1279]  unlikely that those "unfeminine" and "unprofessional" women will readily find an equal number of similarly rewarding jobs where employers are equally eager to reward their particular gender and race expressions and to penalize others for instance, white men without make-up or white men who don't alter their naturally straight, balding, or graying hair.**

**Taking seriously the capacity of legal rights to produce as well as to protect individuals and their interests, left activismand intellectualism should have all the more reason to engage, rather than cede, rights-based law reform. Wendy Brown's chapter on rights affirms the paradoxical necessity and danger of feminist rights, but then tends to imagine that the productive capacity of rights will necessarily threaten left ideals. 390 Why does Brown see a problem, rather than a possibility, when she observes that left visions of rights based on intersecting identities will bring into being new political subjects? 391 When welfare mothers, for instance, seize on human rights discourse to build legitimacy as political actors participating in a global quest for political, racial, gender, and economic justice, their new identity - however risky and regulatory - might still well be a welcome change from the regulatory impact of an anti-rights identity as needy or greedy societal dependents, sexual deviants, or market failures.**

**Finally, when Brown and Halley criticize "governance legalism" for implicating left politics in potentially coercive power, they seem to refuse left power as much as left statism. Commenting on the example of AIDS activists who sought participation in Food and Drug Administration procedures, they argue that, "this kind of left legalism seeks to involve the left directly in governance: once you win, you are the state." 392 They are right to warn that any particular left regulatory effort should be scrutinized for anti-left impact, and that in a society of systematic  [\*1280]  subordination, few regulatory reforms will be free of political constraints that make liberation for some contingent on oppression of other subordinated groups. Yet they ignore that the same problematic effects equally challenge any left abstention from (or resistance to) state governance, unless we fall back on fundamentalist faith in an autonomous private sphere inherently and naturally safe from oppressive power (as do right-wing market or moral fundamentalists).**

**From a critical perspective that refuses such fundamentalism, the hard and urgent question is not whether or not to be "the state," but which state structures, governed in whose interests, we (and others) will have the risk and responsibility of being part of and being subjected to. Guerrilla theater by Act-Up activists may feel more liberating, transgressive, and comfortable to some U.S. activists and scholars than tedious, marginalized, and morally messy involvement in federal bureaucracy. But those feelings provide no guarantee of left moral superiority or political effectiveness in a time whenpharmaceutical companies and right-wing Christians are happy to seize state authority to advance their interests at the expense of millions of lives. As the "stupidest housemaid" concludes in Paul Butler's rewriting of the classic jurisprudential story of the Spelunkian Explorer, surrendering the power to invoke the rule of law is even stupider and more pitiful than believing in the rule of law.**

#### Tactical engagement with law don’t produce violence---rejecting it is worse

**Dean 1 – Mitchell Dean, Professor of Sociology at Macquarie University in Australia, STATE OF IMAGINATION: ETHNOGRAPHIC EXPLORATIONS OF POSTCOLONIAL SPACE, Ed: Thomas Blom Hansen, p. 61-62**

**The study of governmentality has yet to open up the extensive discussion of authoritarian and nonliberal governmentality. Foucault's analysis of National Socialism is a striking contribution to this problem for a number of reasons. First, it shows that this case of what might be thought of as, to put it mildly, a nonliberal or authoritarian form of rule is composed, like liberal rule, of biopolitical and sovereign elements. It also places National Socialism, like liberalism, within the development of a government of biopolitical processes. This does not mean that we should efface thedifferences between liberal and nonliberal rule. Nor is this analysis an attempt to undermine critical distinctions between such forms. What it does illustrate, however, are the dangers inherent in biopolitical rule and in the articulation of the shepherd-flock and city-citizen games that Foucault held as central to modem politics. The continuities between authoritarian and liberal governmentality, together with the recovery of the illiberal components of liberalism, remind us of the dangers of not calling into question the self-understanding of liberalism as a limited government acting through a knowledge of the processes of life, yet, at the same time, safeguarding the rights of the political and juridical subject.   There is no necessity that means that our most general rationalities of rule such as sovereignty and biopolitics will ineluctably lead to the truly demonic eventualities we have continued to witness right to the beginning of the twenty-first century. Nor, however, is there any guarantee that the appeal to rights within liberal democracies and the international community of states will guard against such eventualities, as the contemporary confinement of illegal immigrants in camps in liberal democracies attests. Elements within sovereignty and biopolitics will continue to provide resources forpolitical rationality and action in Weber's sense of the attempt to influence the government of organization. But there can be no system of safeguard's that offer us a zone of comfort when we engage in political action. When we do so, Foucault's position here seems to suggest, we enter a zone of uncertainty and danger because of the governmental resources we have at our disposal. We might add that the price of not engaging in political action is equally great if not greater.  A condition of informed political action remains an analysis of the actors involved, the contexts of their action, the resources at hand, the tactics used, and the ends sought. Though handling this relation between biopolitics and sovereignty remains tricky,  we must establish an analysis of the way an implementation of programs of the administration of life opens fresh arenas of contestation, negotiation, and redefinition around citizenship, democracy, and rights. We must also be prepared to admit, nevertheless, that the appeal to rights might link this form of contestation to the powers it contests, particularly when such an appeal concerns the rights of those with¬out any states but their mere existence.**

#### Legal change works. The aff doesn’t.

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**The democratic movements have broken down the sterile and false separation between the oikos and the polis argued for by Hannah Arendt40, and the similar separations between everyday life and social reproduction and public life, between zoe and bios. This is not by chance: slave plantationswere private homes; the family enterprise studied by Marx was considered virtually an extension of the owners‟ household; the needs of working families for subsistence or health care, or the infant mortality rate, unwanted pregnancies and their impact on women‟s lives and the mortality rate of women in childbirth were all considered private affairs, not public or political ones. It was the accomplishment of the modern workers and women‟s movements, of modern democracy, to change this state of affairs. Agamben sneeringly dismisses, indeed scarily demonizes this accomplishment as “biopolitics”: What comes to light in order to be exposed apud Westminster is, once again, the body of homo sacer, which is to say, bare life. This is modern democracy‟s strength, and at the same time, its inner contradiction: modern democracy does not abolish sacred life but rather shatters it and disseminates it into every individual body, making it into what is at stake in political conflict. And the root of modern democracy‟s secret biopolitical calling lies here: he who will later appear as the bearer of rights, and according to a curious oxymoron, as the new sovereign subject…can only be constituted as such through the repetition of the sovereign exception and the isolation of corpus, bare life, in himself. If it is true that law needs a body in order to be in force, and if one can speak, in this sense, of “law‟s desire to have a body”, democracy responds to this desire by compelling law to assume the care of this body.41 Agamben goes on to argue, incredibly, that the very right of habeas corpus by requiring the sheriff to exhibit the body of the accused undermines the liberty of the accused, an interpretation unique in the thousand-year history of habeas corpus rights whose defense has quite rightly underpinned many oppositions to Bush administration tactics in the War on Terror, and whose history has recently been provided a radical defense and materialist interpretation by Linebaugh already cited. The long process of democracy “compelling law to assume the care of the body” instead is the accomplishment of centuries of struggles by ordinary people precisely to move the state out of the business of killing and into the business of providing health care and education. This is what led Ernest Gellner to state, while overstating the case, “"At the base of the modern social order stands not the executioner but the professor… The monopoly of legitimate education is now more important, *more central than* the monopoly of legitimate violence.42” That the European social democratic welfare state coincided with the European Union‟s one great accomplishment, the end of wars between the nation-states of Europe should give us pause for thought43. That the abolition of the death penalty followed these developments should make the relationship clear. What seals the argument is that the revived militarism, political repression and demonization of unpopular minority groups in Europe follow upon the efforts directed by the EU Commission and signed on to by every EU member government to privatize, liberalize markets, overcome workers‟ resistance to “flexible” work organization, and impose neoliberal globalization44. The relationship between the democratic class struggle to defend subsistence and basic needs and the defense of individual rights and limitation of state power should be clear. That it isn‟t should be attributed to an elitist, too-sophisticated by half approach to the state, democracy and class struggle that appears radical but in fact undermines the very foundations of democracy and social welfare by not making these struggles an integral part of its analysis. The movements for democracy, the class and gender struggles that brought it about and have continued to try to extend it to more spheres of life are, as Marx explained to the First International, not extensions of state power, but partial transformations of the state from a police apparatus and killing machine for the ruling class into a set of functions whose institutions and cadre nowconcern themselves with caring for the needs of society’s members, with all the contradictions and flaws that studies of the welfare state have demonstrated but with all its benefits too: However, the more enlightened part of the working class fully understands that the future ofits class, and, therefore, of (hu)mankind, altogether depends upon the formation of the rising working generation. They know that, before everything else, the children and juvenile workers must be saved from the crushing effects of the present system. This can only be effected by converting social reason into social force, and, under given circumstances, there exists no other method of doing so, than through general laws, enforced by the power of the state. In enforcing such laws, the working class do not fortify governmental power.On the contrary, they transform that power, now used against them, into their own agency. They effect by a general act what they would vainly attempt by a multitude of isolated individual efforts45.**