# 1NC

### 1

#### The role of the ballot is to determine the desirability of topical action:

#### The Aff violates this:

#### “USFG should” means the debate is solely about a policy established by governmental means

Ericson 3 – Jon M. Ericson, Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., The Debater’s Guide, Third Edition, p. 4

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

#### Vote neg for two reasons:

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

#### Second- our Testing warrant:

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

Poscher ‘16

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

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

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

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

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

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

f) The Advantage Over Non‐Argumentative Alternatives

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

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

2. THE SEMANTICS OF AGONISTIC DISAGREEMENTS

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

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

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

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

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

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

Connolly 17

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

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

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

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

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

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

#### Interp – the aff team must disclose the advocacy they’re defending or confirm that they’re reading a new aff at least 15 minutes before the round – key to clash and takes out all defense on T.

### 2

#### Two Llinks

#### 1 - The 1AC’s value stands on its own---responding to it with judgement and the ballot is a hollow validation that siphons off political energy and draws them into the oppressive gaze of the academy---vote Negative to decline affirmation

Phillips 99 – Dr. Kendall R. Phillips, Professor of Communication at Central Missouri State University, PhD in Speech Communication from Pennsylvania State University, MA in Speech Communication from Central Missouri State University, BS in Psychology and Sociology from Southwest Baptist University, “Rhetoric, Resistance, and Criticism: A Response to Sloop and Ono”, Philosophy & Rhetoric, Volume 32, Number 1, p. 96-101

My concern with this movement centers around an issue that Sloop and Ono seem to take as a given, namely, the role of the critic. On one hand, calling for the systematic investigation of existing marginalized discourses is a natural extension both of critical rhetoric (see McKerrow 1989, 1991) and of the general ideological turn in criticism (see Wander 1983). On the other hand, the ease of transition from criticism in the service of resistance to criticism of resistance may obscure the need to address some fundamental issues regarding the general function of rhetorical criticism in an uncertain and contentious world. Beyond licensing the critic to engage in political struggle, Sloop and Ono advocate the pursuit of covert resistant discourses.

Such a move not only stretches our understanding of rhetoric and criticism, but also alters significantly the relationship between critic and out- law. Critical interrogation of dominant discursive practices in the service of political/cultural reform is supplanted in favor of positioning covert out- law communities as objects of investigation. Invited to seek out subversive discourses, the critic is positioned as the active agent of change and the out-law discourse becomes merely instrumental. Rather than academic criticism acting in service of everyday acts of resistance, everyday acts of resistance are put into the service of academic criticism.

Rhetorical resistance

That we are "caught within conflicting logics of justice that are culturally struggled over" (Sloop and Ono 1997, 50) and that rhetoric is employed in these struggles seems an uncontroversial statement. Despite the theoretical miasma surrounding judgment, Sloop and Ono accurately note, the material process of rendering judgments (and of disputing the logics of litigation) continues in the world of actually practiced discourse. In the materially contested world, rhetoric is utilized both by those seeking to secure the grounds of dominant judgment and by those seeking to undermine or supplant dominant cultural logics with some out-law notion of justice.

The distinction between these two cultural groups, "in-law" and out- law, however, deserves some consideration prior to any discussion of the role of the critic as implied in the out-law discourse project. The discourse of the dominant or those within the bounds of superordinate logics of litigation is reminiscent of Michel De Certeau's (1984) strategic discourse. For De Certeau, strategies are utilized by those who have authority by virtue of their proper position. Strategies exploit the institutionally guaranteed background consensus by which power relations (and litigations) are maintained and advanced. In contrast, tactics are utilized by those having no proper place of authority within the discursive economy who must seek opportunities whereby the discourse of the dominant might be undermined and contested. To extend Sloop and Ono's definition, out-law discourses are those that can (and, by their analysis, do) take advantage of situations (e.g., race riots) to disrupt the regularity of dominant cultural groups.

The ongoing struggle between strategically instituted cultural dominants and the "out-law always lurk[ing] in the distance" (66) is acknowledged, even celebrated, by Sloop and Ono. What their acknowledgment fails to provide, however, is a clear need for critical intervention. Indeed, quite the reverse is presented: It is the critic (particularly the left-leaning critic) who needs out-law discourse. While the struggles over justice, equality, and freedom have gone on, the left-leaning critics are those who have theoretically excluded themselves from the disputes. The study of out-law dis- courses, then, provides a means to reinvigorate the intellectual and re-institute (academic) leftist thinking into popular political struggles (53-54). Thus, Sloop and Ono's project incorporates three types of rhetoric: the rhetoric of the in-law, presumably the traditional object of critical attention; the rhetoric of the out-law, the study of which may transform our understanding of judgment as well as reinvigorate leftist democratic critiques; and the rhetoric of the critics who, having lost their political po- tency, can exploit the discourse of the out-law to promote ideological struggles. It is to this critical rhetoric that I now turn.

Resistance criticism

Sloop and Ono (1997) clearly state the relationship they envision between the rhetorical critic and out-law discourse: "Ultimately, we will argue that the role of critical rhetoricians is to produce 'materialist conceptions of judgment,' using out-law judgments to disrupt dominant logics of judgment" (54; emphasis added). Here the critic seeks out vernacular discourse (60), focuses on the methods and values embodied in these communities (62), listens to and evaluates the out-law community (62-63), and chooses appropriate discourses for the purpose of disrupting dominant practices (63). Essentially, it is the critic who seeks out marginalized discourses and returns them to the center for the purpose of provoking dominant cultural groups (63).

Despite acknowledging the efficacy of out-law discourses, Sloop and Ono assume that the critiques generated and presented by the out-law community have only minimal effect. The irony, and indeed arrogance, of this assumption is evident when they claim: "There are cases, however, when, without the prompting of academic critics, out-law discourses serve local purposes at times and at others resonate within dominant discourses, disrupting sedimented ways of thinking, transforming dominant forms of judgment" (60; emphasis added). Sloop and Ono seem to suggest that such locally generated critiques are the exception, whereas the political efficacy of the academic critic is the rule. This seems an odd claim, given that the justification for their out-law discourse project is the lack of politically viable academic critique and the perceived potency of out-law conceptions of judgment. Their suggestion that out-law communities are in need of the academic critic contradicts not only the already disruptive nature of existing out-law discourses (the grounds for using out-law discourse), but also the impotence of contemporary critical discourse (the warrant for studying out-law discourse).

By this I do not mean that the critiques and theories generated by academically instituted intellectuals have not been incorporated into subversive discourses. Just as out-law discourses inevitably mount critiques of dominant logics, so, too, the perspectives on rhetoric and criticism generated by academics are used in resistance movements. Feminist critiques of patriarchy, queer theories of homophobia, postcolonial interrogations of race have found their way into the service of resistant groups. The key distinction I wish to make is that the existence of criticism (academic or self-generated) in resistance does not necessitate Sloop and Ono's move to a criticism of resistance.

What Sloop and Ono fail to offer is an adequate argument for "taking public speaking out of the streets and studying it in the classroom, for treating it less as an expression of protest" (Wander 1983, 3) and more as an object for analysis and reproduction within the political economy of the academy. Philip Wander made a similar charge against Herbert Wicheln's early critical project, and this concern should remain at the forefront of any discussion aimed at expanding the scope and function of criticism. Sloop and Ono offer numerous directives for the critic without addressing whether the critic should be examining out-law discourses in the first place. While it is too early to suggest any definitive answer to the question of criticism of resistance, some preliminary arguments as to why critics should not pursue out-law discourses can be offered:

(1) Hidden out-law discourses may have good reasons to stay hidden. Sloop and Ono specifically instruct us that "the logic of the out-law must constantly be searched for, brought forth" (66) and used to disrupt dominant practices. But are we to believe that all out-law discourses are prepared to mount such a challenge to the dominant cultural logic? Or, indeed, that the members of out-law communities are prepared to be brought into the arena of public surveillance in the service of reconstituting logics of litigation? It seems highly unlikely that all divergent cultural groups have developed equally, or that all members of these groups share Sloop and Ono's "imperial impulse" (51) to promote their conceptions and practices of justice.

(2) Academic critical discourse is not transparent. Here I allude to the overall problem of translation (see Foucault 1994; Lyotard 1988; Lyotard and Thebaud 1985; Zabus 1995) as an extension of the previous concern. Critical discourse cannot become the medium of commensurability for divergent language games. Are we to believe that the "use" of out-law dis- course by critics to disrupt dominant practices can fail to do violence to these diverse/divergent logics? Are out-law discourses merely tools to be exploited and discarded in the pursuit of returning leftist academic dis- course to the center?

(3) Perhaps the academic translation of out-law discourse could be true to the internal logic of the out-law community. And, perhaps the re-presentation of out-law logic within the academic community will bestow a degree of legitimacy on the out-law community. Nonetheless, the effect of legitimizing out-law discourse is unknown and potentially destructive. In an effort to siphon the political energy of out-law discourse into academic practice, we may ultimately destroy the dissatisfaction that serves as a cathexis for these out-law discourses. It seems possible that academic recognition might take the place of struggle for material opportunities (see Fraser 1997). But, will academic legitimation create any material changes in the conditions of out-law communities? I mean to suggest, not that it is better to allow the out-law community to suffer for its cause, but rather that incorporating the struggle into an (admittedly) impotent academic critique does not offer a prima facie alternative.

(4) Criticism of resistance denies the practical and theoretical importance of opportunity. Returning to De Certeau's notion of tactics, the crucial element of these discursive moves is their use of opportunity to disrupt the proper authority of the dominant. The kairos of intervention provides the key to undermining "in-law" discourses. But when is the "right moment in time" for the academic reproduction of out-law discourse? Mapping the points of resistance (ala Foucault and Biesecker) entails interrogating "in-law" discourses for their incongruities and contradictions, not turning the academic gaze upon those communities waiting for an opportunity. Out-laws do not lurk in the forefront (66), hoping to be exposed by academic critics; they wait for the right moment for their disruption. Rhetoricians can provide rhetorical instructions for seeking opportunities and for exploiting these opportunities (literally making the culturally weaker argument the stronger), but this does not justify interrogating (intervening in) the cultural logics of the marginalized.

The concerns raised here are not designed to dismiss Sloop and Ono's provocative essay. The divergent critical logic they outline deserves careful consideration within the critical community, and it is my hope that the concerns I raise may help to further problematize the relationship between

resistance and rhetorical criticism.

Rhetorical criticism

As I have suggested, my purpose is to use the provocative nature of Sloop and Ono's project to extend disputes regarding the ends of rhetorical criticism. Diverging perspectives on the ends of criticism have been categorized by Barbara Warnick (1992) as falling along four general lines: artist, analyst, audience, and advocate. Leah Ceccarelli (1997) discerns similar categories around the aesthetic, epistemic, and political ends of rhetorical criticism.

The out-law discourse project presents clear ties to the notion of critic as advocate. For Sloop and Ono, the critic is an interested party, discerning (and at times disputing) the underlying values and forces contained within a discourse. Additionally, however, the out-law discourse critic is an analyst focusing on the hidden, aberrant texts of the out-law and "rendering] an incoherent or esoteric text comprehensible" (Warnick 1992, 233). Now, I am not suggesting that a critic must serve only one function or that the roles of advocate and analyst are mutually exclusive; rather, these entanglings of power (political ends) and knowledge (epistemic ends) are inevitable. My concern is that we not neglect the complexity of these entanglements. Turning covert out-law discourses into objects of our analyses runs the risk of subjecting them both to the gaze of the dominant and to the power relations of the academy. As the works of Michel Foucault (especially 1979, 1980) aptly illustrate, practices presented as extending such noble goals as emancipation and humanity may endow institutions of confinement and objectification. Any justification for studying out-law dis- course because doing so may extend our political usefulness in the pursuit of emancipatory goals must not obscure the already existing power relations authorizing such studies. Our attempts to extend our domains of knowledge and expertise (authority) must not be pursued unreflexively.

#### 2a. Calling racist debate community norms anti-competitive flattens the nuance of the harmful norms and monopolization. Speech acts grow more potent when such deployments are removed.

Kipnis ‘7

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

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

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

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

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

Words of Caution

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

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

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

Understanding discourse and its analysis

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

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

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

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

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

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

#### We can defend the rest of the aff strategy and negate only certain parts. 2NR consolidation is best and we can subtract 2AC frames.

#### Only conditional tests of limited agreement incentivize narrow testing of their specific claims. Requiring us to disprove the entire aff forces extreme impact turns that lack nuance and political utility.

#### Nuanced testing is a better model of engagement to improve praxis.

Williams 15 – Douglas Williams, Third-Generation Organizer, BA in Political Science from the University of Minnesota at Morris, MPA from the University of Missouri Columbia, Doctoral Student in Political Science at Wayne State University, internally quoting Freddie DeBoer, Lecturer at Purdue University and PhD in Rhetoric and Composition from Purdue University and MA in English with a Concentration in Writing and Rhetoric from The University of Rhode Island, The South Lawn, <https://thesouthlawn.org/2015/03/10/the-dead-end-of-identity-politics/> [language modified]

What conversation is there to be had around that? It is as if the mere existence of her identity inoculates her from any critique. How did we get here?

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Freddie DeBoer makes a great point in his piece on what he calls “critique drift“:

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

Look, I am Black. Also, sometimes, I can be wrong. Those two things are not mutually exclusive, and yet we have gotten to a point where any critique of tactics used by oppressed communities can result in being deemed “sexist/racist/insert oppression here-ist” and cast out of the Social Justice Magic Circle. And listen, maybe that is cool with some folks. Maybe the revolution that so many of these types speak about will simply consist of everyone spontaneously coming to consciousness and there will be no need for coalitions, give-and-take, or contact with people who do not know every word or phrase that these groups use as some sort of litmus test for the unwashed.

But for the rest of us who reside in a reality-based world, where every social interaction is not tailored for your idiosyncratic indignations, we know that casting folks out for the tiniest of offenses will lead to a Left that will forever be marginalized and ineffective. I have stated before that the kind of people who put out these lists and engage in the kind of identitarian caterwauling that has become rote copy on the Internet might actually want that, as a world where left-wing activism is made potent and transformative will be one where they cannot simply take comfort in their cocoon of self-righteousness. But damn them when I can turn on my computer and see one Black person after another being gunned down by police. Damn them when we have a president that can sit there with a straight face and speak the words of freedom and liberation while using the power at his disposal to deny those very concepts to others. And damn them when we can get thousands of words on Patricia Arquette drunk at a party or how it is privileged to not like the same musicians that they do, but we cannot seem to get any thoughts on how the biggest moment for communities of color since the 1960s is being squandered in a hail of intergenerational squabbling. And do not even get me started on people writing articles that malign long-standing activist organizations without a whiff of evidence that there has been any wrongdoing on their part.

### Case

#### 1AC Boxell is a double turn to the aff – the vast majority of the 1AC advocates for breaking up anticompetitive debate practices that break up white supremacy but Boxell says that causes worse outcomes for black people – means that marginalized people within debate are disproportionately targeted and the structures they Kritik remain in tact

#### **Their evidence in the small font explicitly says Indigenous and African Indigenous people can use settler institutions to their advantage.**

Boxell 21 [Mark, received his PhD in history from the University of Oklahoma. His current book project is tentatively titled Red Soil, White Oil: Petroleum and White Supremacy in the Progressive-Era United States, “From Native Sovereignty to an Oilman’s State: Land, Race, and Petroleum in Indian Territory and Oklahoma,” The Journal of the Gilded Age and Progressive Era (2021), 20, 216–233, doi:10.1017/S1537781420000808//ak47]

In 1907, two geology professors, G.E. Condra and Charles N. Gould, published an informational tract in the Bulletin of the American Geographical Society touting Indian Territory’s prospects as a destination for industrious white settlers. Included in “Opening of the Indian Territory” was a narrative on the territory’s burgeoning petroleum industry, which Condra and Gould predicted would continue to grow. They lamented how the collective system of land tenure practiced by the territory’s Indigenous nations and “Government control” (a reference to federal restrictions) had retarded oil prospecting. However, in the authors’ eyes the allotment of Indian land into individual properties was quickly solving that problem; indeed, on the verge of statehood, Indian Territory contained thousands of oil wells and a “nearly continuous line of derricks,” seventy-five miles in length, that extended from southern Kansas to Tulsa. Condra and Gould’s interest in oil was perhaps predictable given their backgrounds in the infant science of geology. But their guide to Indian Territory was just as invested in explaining the region’s racial makeup. The two white authors noted the differences they saw between “full-blood,” “mixedblood,” and “quarter-breed” Indians; indicated that Cherokees had for years readily mixed with whites, while Creeks tended to marry into Black families; and insisted that white civilization was bound to overtake this mixed-race world. “The white man is to rule,” they stated, “and the problem of the Indian is largely solved in his amalgamation.” It had been the “destiny” of Indigenous people to “give [their] blood and a few strong traits” to white society, but to otherwise disappear. Meanwhile, “The negro is to remain a problem in social, educational, and industrial matters.” It was from this “cosmopolitan body” that the “crucible of civilization is to reduce a citizenship” in Indian Territory.1

Over the following two decades, establishing the white man’s citizenry that Condra and Gould envisioned turned out to be heavily rooted in funneling the streams of wealth that flowed from petroleum into the hands and pockets of whites, despite Indian Territory and Oklahoma’s status as a region of widespread Indigenous, African Indian, and African American landownership. The practices that allowed white people to remove oil wealth from Native and Black pockets were the product of a racialized mineral regime founded upon the settler principle that non-whites were especially incapable of self-governance in a world of petroleum abundance. This principle was baked into the settler-colonial policy of allotting collectively held tribal land into privately owned homesteads. As part of this process, white lawmakers and officials prevented newly-minted Indian landowners from alienating their allotments and mandated that white guardians oversee the leasing of land for oil production. Likewise, the State of Oklahoma required that white guardians oversee oil-rich allotments owned by Black citizens of the state’s Indian nations. While such rules ostensibly “protected” Indigenous and Black Indigenous landowners from losing their property, they provided a legal path through which white settlers seized Native property, squandered Black and Indigenous wealth, and forced Indians and other peoples of color off of the most desirable pieces of oil land.2

Allotment was a federally backed scheme to educate Natives in the traditions of economic individualism and cultural liberalism, to force Indigenous peoples to, as one historian puts it, learn the “whitening culture of capitalism.” However, the potential of great mineral wealth in Indian Territory destabilized this social-engineering project, which was built on the assumption that large swaths of land of relatively equal value could be easily divided among tribal citizens. Contrary to this, oil abundance offered a handful of “full-blood” Indians and African Natives unimaginable riches through the tapping of dormant petroleum resources, which undermined white reformers’ goals of transforming Native people into yeoman farmers and wage workers.3 For lawmakers, federal agents, and local officials and business owners, this threat to the reformative ethos of allotment helped justify white control of Natives’ oil inheritance. Oil booms threatened to equip people of color with social and economic power just as whites worked to define and instill a racial hierarchy that achieved the opposite. It became imperative for whites to closely manage Indigenous and Black petroleum property, not only as a means of expanding the former’s material possessions, but also as an avenue through which social difference could be more broadly policed and white sovereignty achieved. Despite this, Indigenous and African Indigenous individuals used settler institutions, such as state and county courts, to defend their right to oil-rich property and to leverage the racialized property regime that assumed their incompetence to their advantage.4

#### Their tabroom arguments are ahistorical

#### Tabroom – other tabbing functions are still viable and prefs at this tournament prove that their argument isn’t universally true. MPJ was an aff that Louisville read in the early 2000s but change happened at this tournament because of specific lobbying to change in round practices.

#### NDT and CEDA merger – other splits from NDT and CEDA prove that its not true – there are other successful debate markets

#### How we write tags and cite evidence all pre-date verbatim – it only continued pre-dominant practices, BUT verbatim is key to the mass distribution of documents – that’s good – helps resolve structural fairness by reducing the strategic upside big schools had from scouting all rounds in person. This argument doesn’t necessitate their participation on the wiki or a blanket defense of the wiki and verbatim but proves it CAN be used for good

#### State-based legal restrictions are a key and continuingly relevant site for control of logistics---their description of pure privatization is a total misread

Cowen 18 – Deborah Cowen, Associate Professor of Geography at the University of Toronto, “Editors’ Interview with Deborah Cowen”, South Atlantic Quarterly, Volume 117, Number 2, http://eprints.whiterose.ac.uk/138358/4/Interview%20with%20Deborah%20Cowen%20-%2015%20July%202017.pdf

*3. How does the perspective on logistics allow to move beyond a state-centered analysis? And how do you see it play out in some concrete cases?*

I cannot think of a way to tell a story about logistics without the state. The state has long been a key force in the field and remains so, although in changing form. From a North American perspective, we might say that the state functions like the Robin to a bolder and more dynamic corporate Batman. Robin follows Batman’s lead, but Batman needs Robin, intimately. We see this cooperation and collusion between the state and the corporate sector clearly in the recent disclosure of the role of the (public) police in protecting the private pipelines of oil logistics companies over Indigenous peoples and their supporters at Standing Rock. And this only echoes long histories of private security protecting imperial states, for instance in the use of the Pinkerton men to protect rail infrastructures that enabled the movement westward and to discipline workers who made these systems move. We also see it in the ‘public-private- partnership’ of war and extraction in places like Iraq, where (public) militaries hand over detention facilities to private oil logistics companies once they have ‘secured’ the spaces of circulation. Today Camp Bucca is known as the Basra Logistics City.

But the bigger story of logistics, as I have suggested repeatedly, is not simply the privatization of state force or the militarization of trade. The entanglement is a feature of a much more profound imperial co-production – making the separation between spheres seem recent and strange. The complex political-legal production and regulation of piracy is one domain wherein this is evident. So is the history of colonial rule through the Hudson’s Bay or East India Company where the state and the corporate sector together crafted a deadly logistical life. Even the revolution in logistics of the mid twentieth century emerged out of a deeply logistical form of mass state warfare that was supported by corporations. The achievements of military logistics in managing mass technoscientific warfare were then deliberately brought back to the corporation by figures like Robert McNamara (himself a perfect hybrid of these entangled worlds). Post WWII efforts to transform the military art of logistics into a corporate science saw the logic of efficiency of movement, measured historically by military concerns for minimizing the time and cost of movement, superceded by corporate models of (exchange) value maximization. With the example of the flag of convenience, we see one of the essential roles of the state, in terms of crafting the legal infrastructures for corporate rule. It is the state that creates the legal infrastructure that allows corporations to transgress the national borders that they continue to mobilize and exploit.

#### Logistics aren’t a totalizing system of violence and institutional reprogramming can alter it

Chua 18 – Charmaine Chua, Professor of Politics at Oberlin College, PhD from the University of Minnesota, et al., “Introduction: Turbulent Circulation: Building a Critical Engagement with Logistics”, Environment and Planning D: Society and Space, Volume 36, Number 4, p. 622-624

Yet logistical space is also riven with contradictions and constantly faced with the real and potential catastrophes posed by “gigantic breakdowns and stoppages” (Mumford, 1961: 544). As Rossiter, 2014 reminds us, the ambitions of logistics are ultimately “operational fantasies” (2014: 54) that rely on, even as they aim to contain, a recalcitrant polity through calculative forms of domination and repression. As such, we should be careful not to reify logistics as a seamless system of instantaneous flow and total functional integration.

By paying attention to the frictions and stoppages that are part and parcel of logistical processes, critical scholars have noted that even as logistics is taken up as a tool of imperial dispossession and capitalist power, it also produces new sites of vulnerability and potential emancipation. To this end, logistics has become a growing force not only among states, corporations, military forces, and aid organizations but also within social movements and activist organizations that aim to challenge their practice. Beyond the accidental breakdowns and stoppages that threaten just-in-time supply chains are more deliberate efforts to interrupt the circulation of violence and remake environmentally and socially just forms of provisioning and sustaining.

A critical engagement with logistics is a feature not simply of academic practice but of intellectual, political, and practical organizing across various sectors of work and arenas of contestation. These efforts are clearly not brand new—not only in the transportation sector, where workers have long struggled over their conditions of work, but in myriad movements that have worked to sustain themselves over time, including through uprisings, occupations, and revolutions. As logistics has ascended to a place of prominence in the organization of war and trade globally, it has also become subject to new frequencies and forms of contestation. Alberto Toscano (2014) highlights this shift when he asks, “Can we define or declare a relocation of political and class conflict, in the overdeveloped de-industrializing countries of the ‘Global North,’ from the point of production to the chokepoints of circulation?” Such an approach centers sites of physical circulation as pressure points where mass movements can contest the violence of state and capital, signaling a shift in tactics from the withdrawal of productive labor power to disruptive blockades and sabotage along the arteries of trade (Clover, 2016; Degenerate Communism, 2014; Oakland Commune, 2011).

A scholarly discourse has emerged under the banner of “counterlogistics” that engages labor, anticolonial, and antiracist struggles (Bernes, 2013; Chua et al., 2016; Fox-Hodess, 2017). We might also trace a growing reliance on a critical practice that explicitly names the field: logistics groups, tents, and committees are now a mainstay of radical organizing, pointing to the possible repurposing of logistical models as sources of care and social reproduction (Armstrong, 2015; Cowen, 2014; Crashnburn, 2014). As Attewell (2018) argues in this issue, initiatives like the US Agency for International Development’s Commodity Export Program “contain within them the germ of a different kind of logistics: one that preserves its will to care, while dispensing with its necropolitical baggage” (735). In this vein, one fertile arena for future research is to examine more expansive possibilities for counterlogistics—asking, following Toscano (2014), “What happens then if we consider the question of circulation less literally? And what would it mean to struggle not simply against material flows but against the social forms that channel them?” By focusing on the social relations that underpin logistical processes, critical engagements with logistics might be productively nudged towards more emancipatory political ends by exploring how counterlogistical contestation is being waged not only in the sectors we might immediately associate with goods circulation but so too in the broader social relations of logistical society.

Yet we should be careful not to fetishize counterlogistical projects without a firm grasp on how the state and capital are invested in controlling the spaces of stocks and flows. Attempts at resisting or disrupting circulation can be co-opted, contained, or absorbed—in the construction of redundant container shipping networks, for example, which give corporations multiple options for rerouting cargo around traffic bottlenecks or restive labor forces. Further, as Timothy Mitchell (2011: chap. 1) and Dara Orenstein (2018) have shown, tactics of sabotage and disruption have themselves become integral to processes of value realization, where capital’s power rests not only in speeding up circulation but also in the capacity to slow it down. More broadly, while the growing prominence of “circulation struggles” (Clover, 2016) presents rich ground for scholarly exploration and political organizing, there is a danger in fetishizing the tactics of material interruption per se. More important than the form of political resistance are its contents, the concrete social relations in which it is embedded and that it seeks to transform. As Chua (2017: 165) argues, “even if material structures are constitutive of the extant political order,” the act of disrupting or sabotaging material flows alone is not enough to reconfigure logistics: “circulation struggles can only have revolutionary potential if collective power is politically mobilized across the supply chain.”

Logistical systems increasingly encroach on everyday life under the justification that rapid, efficient circulation is necessary to the welfare of the economy, the state, and its people. Yet, as both a calculative rationality and a practice of spatial ordering, mainstream iterations of logistics work to promote the accumulation of capital and state power in ways that exacerbate existing inequalities and produce new dispositions of life and death (see Attewell, 2018). The articles collected in this issue point to the myriad ways these apparatuses also distribute inequality, immiseration, and “vulnerability to premature death” (Gilmore, 2007: 28). At the same time, the gap between the idealized imagination of logistics and its messy implementation reveals that the project of making the world safe for circulation is always incomplete. A critical engagement with logistics attends to the struggles, social conflicts, and tensions that can never be excised from global flows. This liveliness of logistics is one aspect that comes to the fore in this theme issue. Interrogating the multiple, varied, and contested lives of logistics brings into focus the violence committed in its name, the vulnerabilities of its networks, and the political possibilities latent in its present-day forms.

#### Study as blockage is impossible and unsustainable and has no chance of unraveling logistical sovereignty

Webb 18 – Dr. Darren Webb, MA, PhD, Senior Lecturer in the School of Education at the University of Sheffield, “Bolt-Holes and Breathing Spaces in the System: On Forms of Academic Resistance (or, Can The University Be A Site Of Utopian Possibility?)”, Review of Education, Pedagogy, and Cultural Studies, Volume 40, Number 2, p. 102-105

The undercommons

“The undercommons” is associated with the work of Fred Moten, Stefano Harney (Harney and Moten 2013) and Stevphen Shukaitis (2009; Undercommoning Collective 2016). At one level, undercommoning is concerned with creating spaces within the academy—“liminal and recombinant spaces” for “subversion” and “sabotage,” as Shukaitis puts it (Shukaitis 2009, 173). These spaces are infused with a utopian dimension as they are inhabited by a network of radical alliances who resist elitism, enclosure, commercialization, and “seek to mobilize the unique historical location and material power of the university to imagine and build a world beyond the present order” (Haiven and Khasnabish 2014, 12). By undercommoning together and forging solidarities, the tensions and contradictions of the contemporary academy can be transformed into “visions, actions and experiments for a radically different world” (Undercommoning Collective 2016).

But the undercommons is more than just the creation of spaces with utopian intent. It is a shifting matrix of spaces, processes, relations, and structures of feeling. Harney and Moten do attach importance to teaching and the classroom—in particular as an opportunity to refuse the call to order—but the undercommons exists in institutional cracks outside the classroom: in stairwells, in alleys, in kitchens, in corridors, in smoking areas, in hiding. The undercommons is a community of maroons, outcasts, and fugitives, not of responsible teachers. It is “always an unsafe neighbourhood” (Harney and Moten 2013, 28). In fact, the undercommons is best described as a way of being: a way of being within and against one’s institution and a way of being with and for the community of outcasts (Melamed 2016). Within and against the corporate-imperial university, the subversive intellectual is unprofessional, uncollegial, impractical, disruptive, disloyal, unproductive, unreliable, “obstructive and shiftless, dumb with insolence,” forever refusing the call to order (Harney and Moten 2013, 34). With and for the undercommons, hapticality describes a way of feeling that is at once unsettled—“to feel at home with the homeless, at ease with the fugitive, at peace with the pursued”—and intensely intimate—“the capacity to feel through others, for others to feel through you, for you to feel them feeling you” (97–98). Together, the maroons of the undercommons engage in study; a mode of sociality, “a kind of way of being with others,” walking and talking and thinking and working together “in a way that feels good, the way it should feel good” (111–112, 117).

There is a definite utopian project at work here. Moten tells us that “I believe in the world and want to be in it. I want to be in it all the way to the end of it because I believe in another world in the world and I want to be in that” (Harney and Moten 2013, 118). The undercommons is presented as an entry point to this other world in the world. It is a “utopic commonunderground,” a utopia “submerged in the interstices and on the outskirts of the fierce and urgent now” (Moten 2008, 1746; Harney and Moten 2013, 51). The call to both disorder and to study—what Freire might have termed the utopian process of denunciation-annunciation—becomes an ontological enactment of something that is already here (Harney and Moten 2013, 133–134). For Harney in particular, the undercommons as a way of being can be understood in terms of rhythm. It is a new rhythm working against the global rhythm of work, the “global assembly line tearing apart the functions of man,” the rhythm of inputs and outputs every facet of which must be “measured and managed” (Harney 2015, 174–176). In contrast, the rhythm of the undercommons is “a militant arrhythmia” that unsettles the rhythm of the line, “invites us to feel around us” and brings the utopic commonunderground into the open (177–178).

It is easy to be seduced by the language of the undercommons. Embodying and enacting it, however, is difficult indeed. Being within and against the university, refusing the call to order through insolent obstructive unprofessionalism, is almost impossible to sustain. Halberstam (2009, 45) describes the undercommons as “a marooned community of outcast thinkers who refuse, resist, and renege on the demands of rigor, excellence, and productivity.” A romantic and appealing notion for sure but refusing and reneging on “the university of excellence” will cost you your job. When Moten describes subversion as a “series of immanent upheavals” expressed through “vast repertoires of high-frequency complaints, imperceptible frowns, withering turns, silent sidesteps, and ever-vigilant attempts not to see and hear” (2008, 1743), one is reminded instantly of Thomas Docherty, disciplined and suspended for his negative vibes.7

Being with and for the maroon community is difficult too. First of all, “Where and how can we find/see the Undercommons at work?” (Ĉiĉigoj, Apostolou-Hölscher, and Rusham 2015, 265). Where and how can one find those liminal spaces of sabotage and subversion, and how does one occupy them in a spirit of hapticality, study, and militant arrhythmia that brings the utopic underground to the surface of the fierce and urgent now? Beautiful language, but how does one live it? Networks do, of course, exist—the Undercommoning Collective, the Edu-Factory Collective, the International Network for Alternative Academia, to name but a few. These are promising spaces for bringing together and harboring the maroons and the fugitives. But networks are typically short-lived, and—as Harney and Moten warned—there is a danger of institutionalization, of taking institutional practices with you into alternative spaces “because we’ve been inside so much” (Harney and Moten 2013, 148). And so, predictably, meetings of the fugitives come with structure, order, an official agenda, and circulated minutes. The outcasts convene in conventional academic conferences, with parallel sessions, panels of papers, lunch breaks, wine and nibbles (e.g., Edu-Factory 2012). These spaces offer time out, welcome respite, a breathing space, a trip abroad, and then one returns to work.

If hapticality, the touch of the undercommons, is “a visceral register of experience … the feel that what is to come is here” (Bradley 2014, 129–130), then this seems elusive. It is hard to detect a sense of the utopic undercommons rising to the surface of the corporate-imperial university. Moten describes the call to disorder and to study as a way to “excavate new aesthetic, political, and economic dispositions” (Moten 2008, 1745). But this notion of excavating is highly problematic. It is common within the discourse of “everyday utopianism”—finding utopia in the everyday, recovering lost or repressed transcendence in “everydayness” (Gardiner 2006)—to describe the process of utopian recovery in terms of excavating: excavating repressed desires, submerged longings, suppressed histories, untapped possibilities. But the fundamental questions of where to dig and how to identify a utopian “find” are never adequately addressed (see Webb 2017). Gardiner defines utopia as “a series of forces, tendencies and possibilities that are immanent in the here and now, in the pragmatic activities of everyday life” (2006, 2). But how are these forces, tendencies and possibilities to be identified and recovered? For Harney and Moten, it is through study, hapticality and militant arrhythmia. These are slippy concepts, however, evading concrete material referents.

What is it to inhabit the undercommons? Those who have written of their experiences refer to “small acts of marronage” such as poaching resources and redeploying them in ways at odds with the university’s designs and demands (Reddy 2016, 7), or exploiting funding streams “to form cracks in the institution that enable the Others to invade the university” (Smith, Dyke, and Hermes 2013, 150). For Adusei-Poku (2015), the undercommons is a space of refuge which is all about survival (2015, 4–5). We who feel homeless in the university are forced into refuge. We gather together to survive. We may gain satisfaction from small acts of marronage, but this is less about bringing the utopic common underground to the surface as it is a form of “radical escapism” (Adusei-Poku 2015, 4). Benveniste (2015, v) tells us that: “The undercommons has no set location and no return address. There is no map for entering and no guide for staying. The only condition is a living appetite. Listen to its hunger for difference.” We need more than poetry, however. And we need more than a series of minor acts of resistance. As Srnicek and Williams rightly emphasize, resistance is a defensive, reactive gesture, resisting against. Resistance is not a utopian endeavour: “We do not resist a new world into being” (Srnicek and Williams 2016, 47). The undercommons, when one can find it, is a bolt hole, a place of refuge, a breathing space in the system. We need something more.

#### The lens of ontology flattens Black life and writes out meaningful pragmatic resistance to racism

Kline 17 – David Kline, Ph.D. Candidate in the Department of Religion at Rice University, MA in Religious Studies from Rice University, Master of Divinity from Duke University, Master of Letters in Bible and Contemporary World from St. Andrews University, BA in Music from the University of Texas, Austin, “The Pragmatics of Resistance: Framing Anti-Blackness and the Limits of Political Ontology”, Critical Philosophy of Race, Volume 5, Issue 1, Project Muse [grammar edit]

Political Ontology and the Limitation of Social Analysis and Legitimate Praxis

Wilderson’s critique of Agamben is certainly correct within the specific framework of a political ontology of racial positioning. His description of anti-Black antagonism shows a powerful macropolitical sedimentation of [End Page 56] Black suffering in which Black bodies are ontologically frozen into (non-) beings that stand in absolute political distinction from those “who do not magnetize bullets” (Wilderson 2010, 80). In the same framework, Jared Sexton, whose work is very close to Wilderson’s, is also right when he shows how biopolitical thought—specifically the Agambenian form centered on questions of sovereignty—and its variant of “necropolitics” found in Mbembe has so often run aground on the figure of the slave (see Sexton 2010).5 Locating the reality of anti-Blackness wholly within this account of political ontology does provide an undeniably effective analysis of its violence and sedimentation over the modern world as a whole. However, in terms of a general structure, I understand Wilderson’s (and Sexton’s) political ontology to remain tied in form to Agamben’s even as it seemingly discounts it and therefore remains bound to some of the problems and limitations that beset such a formal structure, as I’ll discuss in a moment. Despite the critique of Agamben’s ontological blind spots regarding the extent to which Black suffering is non-analogous to non-black suffering, as I’ve tried to show, Wilderson keeps the basic contours of Agamben’s ontological structure in place, maintaining a formal political ontology that expands the bottom end of the binary structure so as to locate an absolute zero-point of political abjection within Black social death. To be clear, this is not to say that the difference between the content and historicity of Wilderson’s social death and Agamben’s bare life does not have profound implications for how political ontology is conceived or how questions of suffering and freedom are posed. Nor is it to say that a congruence of formal structure linking Agamben and Wilderson should mean that their respective projects are not radically differentiated and perhaps even opposed in terms of their broader implications and revelations. Rather, what I want to focus on is how the absolute prioritization of a formal ontological framework of autonomous and irreconcilable spheres of positionality—however descriptively or epistemologically accurate in terms of a regime of ontology and its corresponding macropolitics of anti-Blackness—ends up limiting a whole range of possible avenues of analysis that have their proper site within what Deleuze and Guattari describe as the micropolitical. The issue here is the distinction between the macropolitical (molar) and the micropolitical (molecular) fields of organization and becoming. Wilderson and Afro-pessimism in general privilege the macropolitical field in which Blackness is always already sedimented and rigidified into a political onto-logical position that prohibits movement and the possibility of what Fred Moten calls “fugitivity.” The absolute privileging of the macropolitical as [End Page 57] the frame of analysis tends to bracket or overshadow the fact that “every politics is simultaneously a macropolitics and a micropolitics (Deleuze and Guattari 1987, 213). Where the macropolitical is structured around a politics of molarisation that immunizes itself from the threat of contingency and disruption, the micropolitical names the field in which local and singular points of connection produce the conditions for “lines of flight, which are molecular” (ibid., 216). The micropolitical field is where movement and resistance happens against or in excess of the macropolitical in ways not reducible to the kind of formal binary organization that Agamben and Wilderson’s political ontology prioritizes. Such resistance is not necessarily positive or emancipatory, as lines of flight name a contingency that always poses the risk that whatever develops can become “capable of the worst” (ibid., 205). However, within this contingency is also the possibility of creative lines and deterritorializations that provide possible means of positive escape from macropolitical molarisations.

Focusing on Wilderson, his absolute prioritization of a political onto-logical structure in which the law relegates Black being into the singular position of social death happens, I contend, at the expense of two significant things that I am hesitant to bracket for the sake of prioritizing political ontology as the sole frame of reference for both analyzing anti-Black racism and thinking resistance within the racialized world. First, it short-circuits an analysis of power that might reveal not only how the practices, forms, and apparatuses of anti-Black racism have historically developed, changed, and reassembled/reterritorialized in relation to state power, national identity, philosophical discourse, biological discourse, political discourse, and so on—changes that, despite Wilderson’s claim that focusing on these things only “mystify” the question of ontology (Wilderson 2010, 10), surely have [implicate] implications for how racial positioning is both thought and resisted in differing historical and socio-political contexts. To the extent that Blackness equals a singular ontological position within a macropolitical structure of antagonism, there is almost no room to bring in the spectrum and flow of social difference and contingency that no doubt spans across Black identity as a legitimate issue of analysis and as a site/sight for the possibility of a range of resisting practices. This bracketing of difference leads him to make some rather sweeping and opaquely abstract claims. For example, discussing a main character’s abortion in a prison cell in the 1976 film Bush Mama, Wilderson says, “Dorothy will abort her baby at the clinic or on the floor of her prison cell, not because she fights for—and either wins [End Page 58] or loses—the right to do so, but because she is one of 35 million accumulated and fungible (owned and exchangeable) objects living among 230 million subjects—which is to say, her will is always already subsumed by the will of civil society” (Wilderson 2010, 128, italics mine). What I want to press here is how Wilderson’s statement, made in the sole frame of a totalizing political ontology overshadowing all other levels of sociality, flattens out the social difference within, and even the possibility of, a micropolitical social field of 35 million Black people living in the United States. Such a flattening reduces the optic of anti-Black racism as well as Black sociality to the frame of political ontology where Blackness remains stuck in a singular position of abjection. The result is a severe analytical limitation in terms of the way Blackness (as well as other racial positions) exists across an extremely wide field of sociality that is comprised of differing intensities of forces and relational modes between various institutional, political, socio-economic, religious, sexual, and other social conjunctures. Within Wilderson’s political ontological frame, it seems that these conjunctures are excluded—or at least bracketed—as having any bearing at all on how anti-Black power functions and is resisted across highly differentiated contexts. There is only the binary ontological distinction of Black and Human being; only a macropolitics of sedimented abjection.

Furthermore, arriving at the second analytical expense of Wilderson’s prioritization of political ontology, I suggest that such a flattening of the social field of Blackness rigidly delimits what counts as legitimate political resistance. If the framework for thinking resistance and the possibility of creating another world is reduced to rigid ontological positions defined by the absolute power of the law, and if Black existence is understood only as ontologically fixed at the extreme zero point of social death without recourse to anything within its own position qua Blackness, then there is not much room for strategizing or even imagining resistance to anti-Blackness that is not wholly limited to expressions and events of radically apocalyptic political violence: the law is either destroyed entirely, or there is no freedom. This is not to say that I am necessarily against radical political violence or its use as an effective tactic. Nor is to say that I think the law should be left unchallenged in its total operation, but rather that there might be other and more pragmatically oriented practices of resistance that do not necessarily have the absolute destruction of the law as their immediate aim that should count as genuine resistance to anti-Blackness. For Wilderson, like Agamben, anything less than an absolute overturning [End Page 59] of the order of things, the violent destruction and annihilation of the full structure of antagonisms, is deemed as “[having nothing] to do with Black liberation” (quoted in Zug 2010). Of course, the desire for the absolute overturning of the currently existing world, the decisive end of the existing world and the arrival of a new world in which “Blacks do not magnetize bullets” should be absolutely affirmed. Further, the severity and gratuitous nature of the macropolitics of anti-Blackness in relation to the possibility of a movement towards freedom should not be bracketed or displaced for the sake of appealing to any non-Black grammar of exploitation or alienation (Wilderson 2010, 142). The question I want to pose, however, is how the insistence on the absolute priority of framing this world within a rigid structure of formal ontological positions can only revert to what amounts to a kind of negative theological and eschatological blank horizon in which actually existing social sites and modes of resisting praxis are displaced and devalued by notions of whatever it is that might arrive from beyond.

# 2NC

## T---USFG

### 2NC---O/V

### 2NC---AT: USFG

#### “Federal Government” means the government of the United States of America

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 245)

the government of the United States of America

**[ ] That’s distinct from the people.**

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

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

### 2NC---AT: Should

**“Should” means “must” and requires immediate legal effect**

**Summers 94** (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.[14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn14) The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn16)

[CONTINUES – TO FOOTNOTE]

[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, [802 P.2d 813](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=802&box2=P.2D&box3=813) (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) *In praesenti* means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or ***immediately effective***, as opposed to something that *will* or *would* become effective ***in the future*** *[in futurol*]. See Van Wyck v. Knevals, [106 U.S. 360](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=106&box2=U.S.&box3=360), 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

### 2NC---TVA

#### ---The Parker Immunity AFF---it’s negative state action that defends less federal involvement and fewer protections---you can defend prohibitions that result in economic benefits that can challenge structural oppression

Weissmann ‘21

Shoshana Weissmann, Senior Manager, Digital Media, Communications; Fellow, 3-11-2021 – modified for language that may offend - https://www.rstreet.org/2021/03/11/we-need-antitrust-reform-for-the-little-guy/

Overhauling antitrust is in vogue. Just last month the House Judiciary Committee launched a new series of hearings to flesh out potential changes to America’s current approach to antitrust enforcement. On Thursday, the Senate Judiciary Committee’s Subcommittee on Competition Policy, Antitrust, and Consumer Rights is having a hearing on antitrust reform. And, in a sign of the times, left-of-center advocates want to ensure antitrust enforcers adopt an “anti-racist” agenda that places marginalized communities at the front of the discussion.

So often when we ~~hear~~ (consider) about antitrust, we think about the government seeking to break up large corporate monopolies. Before Google and Facebook, it was Microsoft. Before that, Ma Bell. But there is plenty of anti-competitive behavior that takes place outside of the realm of big business, and there is a way to reform such behavior that also places an emphasis on protecting disadvantaged communities: Congress can overturn the “state action doctrine” as applied to occupational licensing boards. This doctrine has long allowed semi-governmental occupational licensing boards to act in a blatantly anti-competitive manner—one that has a stark and disproportionate impact on ~~minorities~~ (those lacking socio-economic and-or racial privilege), the poor, and small-business entrepreneurs.

The overwhelming burden these occupational licensing requirements place on these groups is staggering, keeping people from earning an honest living, providing for their families, and contributing to society in the profession of their choice. These requirements include expensive schooling to certify practical skills that can be learned in other ways, or policies that limit participation in fields in the name of “safety,” when those safety issues are overblown.

In the 1950s, 1 out of every 20 people in the United States needed a license to do his or her job. Today, it’s 1 out of every 4. From the Obama administration to President Donald Trump to President Joe Biden, virtually everyone recognizes that something is horribly amiss. Even the Federal Trade Commission (FTC) released a detailed report in 2018 highlighting the dangers of overly burdensome occupational licensing and its disproportionate negative effects.

Bad board behavior is rampant. In recent years, Arizona’s cosmetology board cracked down on a student helping his community by cutting hair for people experiencing homelessness. Had Republican Gov. Doug Ducey not stepped in to help, the student’s career could have been ruined. African hair braider Isis Brantley was once arrested for braiding hair without a cosmetology license—a license that wouldn’t have even taught her to braid hair. In Louisiana, elderly widow Sandy Meadows was prevented by the board from earning a living arranging flowers because Louisiana requires a license to do so and she couldn’t pass an exam with a lower pass rate than the state’s bar exam. When she died, she was living in poverty.

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

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

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

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

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

#### Antitrust reform can fill the gaps in current antidiscrimination law by adding teeth and systemic focus.

Davis 21

et al; Joshua P. Davis - PROFESSOR, DIRECTOR OF THE CENTER FOR LAW AND ETHICS, AND DEAN'S CIRCLE SCHOLAR, University of San Francisco School of Law. Eric L. Cramer Berger Montague PC Reginald L. Streater Center for Law and Ethics, University of San Francisco School of Law Mark R. Suter Berger Montague PC. “Antitrust as Antiracism: Antitrust as a Partial Cure for Systemic Racism (and Other Systemic “Isms”).” June 25, 2021. *The Antitrust Bulletin*. journals.sagepub.com/home/abxhttps://doi.org/10.1177/0003603X211023620 {DK}

We usually think of antitrust law as addressing violations of free market norms, not equality norms. The two, however, may be related. Systemic racism (and other systemic “isms”) are about power and its abuse. So is antitrust law. Moreover, antitrust may be able to fill gaps left by antidiscrimination law. In particular: 1. Individual Entities or Actions Versus Economic Systems: Employment discrimination law tends to focus on when the policies of discrete employers—and especially their discrete acts—result in differential treatment of similarly situated workers. It is most useful, for example, when a specific employer—or, better yet, a specific manager—hires or promotes white people instead of equally or better qualified African Americans. But discrimination law tends to founder when, instead, an entire system is designed in a way that places people of color at a disadvantage. Antitrust law, in contrast, assesses entire systems. It can and does take into account how an entire market is structured and whether a firm has exploited the structure of a market—or distorted it—to its advantage. It also can evaluate the conduct of multiple firms. 2. Income Versus Capital: Discrimination law emphasizes income. It offers redress when a protected group receives less compensation than it should. Antitrust law also attends to capital. It can offer relief when those with capital—disproportionately white men—distort markets to harm workers in general—in many industries, disproportionately people of color. 3. Apples to Apples Versus Apples to Oranges: Discrimination law is designed for apple to apple comparisons—for example, whether similarly situated workers are treated differently. Antitrust law to some extent can make apples to oranges comparisons—for example, assessing whether workers (labor) are being exploited by owners (capital). 4. Dividing the Pie Versus Enlarging the Pie: Discrimination law can pit workers against each other for limited resources. Antitrust law can increase the resources of workers generally. 5. Centrist Economic Principles: Antitrust law relies on centrist free market principles. Those may be less controversial than tackling issues of race directly. To be sure, in part for that reason, antitrust laws are limited. They can at best remedy a small portion of the potential wrongs caused by systemic racism. But they can still contribute valuably to racial equality. This essay will explore antitrust law’s potential and limitations as a tool for dismantling systemic racism (and, by implication, dismantling other systemic “isms”). It will focus in particular on workers and discuss both cases in which antitrust law has fulfilled or may fulfill some of its potential as well as cases in which courts may have missed an opportunity to address systemic racism. We will see that, for the reasons noted above, antitrust law can offer a powerful corrective when, for example, disproportionately white ownership and management of one or more firms distort an entire market to take advantage of a pool of workers containing a disproportionally high percentage of African Americans or other traditionally disadvantaged groups. Part II explores the relationship between systemic racism and economics. Part III compares how antidiscrimination and antitrust doctrine address claims by workers. Part IV provides examples of the use of antitrust litigation on behalf of workers to combat systemic racism. Part V concludes and, in doing so, briefly notes some issues antitrust law raises about how antidiscrimination law might be reframed to address systemic racism more effectively.

### 2NC---AT: Antitrust inev

**Antitrust law refers to statutory law.**

**US Code**, Chapter 34—Antitrust Civil Process, https://www.law.cornell.edu/uscode/text/15/1311

(a)The term “antitrust law” includes:

(1) Each provision of law defined as one of the antitrust laws by section 12 of this title

**[Inserting Section 12]**

(a)“Antitrust laws,” as used herein, includes the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety; sections seventy-three to seventy-six, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’ ” approved February twelfth, nineteen hundred and thirteen; and also this Act.

“Commerce,” as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: Provided, That nothing in this Act contained shall apply to the Philippine Islands.

The word “person” or “persons” wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(b)This Act may be cited as the “Clayton Act”.

(Oct. 15, 1914, ch. 323, § 1, 38 Stat. 730; Pub. L. 94–435, title III, § 305(b), Sept. 30, 1976, 90 Stat. 1397; Pub. L. 107–273, div. C, title IV, § 14102(c)(2)(A), Nov. 2, 2002, 116 Stat. 1921.)

**[Section 12 Ends]**; and

(2) Any statute enacted on and after September 19, 1962, by the Congress which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to any restraint upon or monopolization of interstate or foreign trade or commerce;

## Case

### 2NC---Presumption

### 2NC---Ontology

## Frames

No cards read