# Doc---Kentucky---Round 4

# 1NC

## T-USfg

#### Interpretation---the resolution should define the division of Aff and Neg ground---it was negotiated and announced in advance, providing both teams a reasonable opportunity to prepare---only a textual reading of the resolution provides a predictable basis for research.

#### The USFG means the three branches.

OECD 87. Organization for Economic Cooperation and Development. The Control and Management of Government Expenditure. 179. Google Book.

1. Political and organizational structure of government The United States America is a federal republic consisting of 50 states. States have their own constitutions and within each State there are at least two additional levels of government, generally designated as counties and cities, towns or villages. The relationships between different levels of government are complex and varied (see Section B for more information). The Federal Government is composed of three branches: the legislative branch, the executive branch, and the judicial branch. Budgetary decisionmaking is shared primarily by the legislative and executive branches. The general structure of these two branches relative to budget formulation and execution is as follows.

#### Resolved means to enact a policy by law.

Words & Phrases 64. Permanent Edition.

Definition of the word “resolve,” given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It is of similar force to the word “enact,” which is defined by Bouvier as meaning “to establish by law”.

#### The core antitrust laws are The Sherman Act, the Clayton Act, and the Federal Trade Commission Act.

Thomas Horton 10. Professor of Law and Heidepriem Trial Advocacy Fellow, University of South Dakota School of Law. “Rediscovering Antitrust's Lost Values.” The University of New Hampshire Law Review. https://scholars.unh.edu/cgi/viewcontent.cgi?article=1305&context=unh\_lr

Part II of this Article discusses Congress’s historical balancing and blending of fundamental political, social, moral, and economic values to create a constitutional-like set of flexible laws that can be adapted to unforeseen and changing economic and political circumstances.22 Part II.A. briefly reviews some of the extensive scholarship addressing Congress’s balancing of values and objectives in its core antitrust laws including the Sherman, Clayton, and FTC Acts. Parts II.B. and C. explore the less-studied balancing of political, social, moral, and economic values and objectives in more recent antitrust legislation.23 Part II.B. specifically examines the legislative debates undergirding the passage of the HSR Act. 24 Part II.C. then turns to the debates and discourse that led to the passage of the NCRA in 1984 and the subsequent National Cooperative Production Amendments of 1993 and 2004. 25

#### Violation---they don’t defend USfg action that substantially expands the scope of its core antitrust laws.

#### Vote Neg---

#### 1---Fairness---the Neg should win on average 50% of the time---any unfair advantage is a reason they should lose---their arguments are shaped by the drive to win, so presume their arguments are in bad faith

#### 2---Clash---debate requires stasis to motivate research that develops third- and fourth-line responses---that’s key to effective politics and activism regardless of your personal beliefs---their interpretation explodes limits, makes the Aff conditional, and forces the neg into concessionary ground

## T-Subsets

#### ‘Core antitrust laws’ are economy-wide---the aff is particular

Gerber ’20 [David; October; Distinguished Professor of Law at Chicago-Kent College of Law, Illinois Institute of Technology; Oxford Scholarship Online, Competition Law and Antitrust, “What is It? Competition Law’s Veiled Identity,” Ch. 1, p. 14-15]

C. A Core Definition

The Guide uses the terms “competition law” and “antitrust law” to refer to a general domain of law whose object is to deter private restraints on competitive conduct. We look more closely at the terms:

1. “General”—The laws included are those that are applicable throughout an economy and thereby provide a framework for all market operations (there are always some exempted sectors). Laws dealing only with specific markets (e.g., telecommunication) do not play that role.

2. “Domain of Law” here refers to a politically authorized set of norms and the institutional arrangements used to enforce them.

Is it law—or is it policy? The relationship between “competition law” and “competition policy” is not always clear. Often the terms are used interchangeably, but there can be important differences between them. Both can refer to norms used to combat restraints on competition, but they represent two different ways of looking at the relevant laws, and the differences can influence how norms are interpreted and applied. “Law” implies that established methods of interpretation are used to interpret and apply the norms and that established procedures are the sole or primary means of enforcing and changing the norms. In this view, the norms are a relatively stable component of a legal system. Thinking of those same norms as “policy,” on the other hand, implies that they are a tool of whatever government is in power and that it can use and modify them as it wishes.

3. “Restraint” refers to any limitation imposed by one or more private actors that reduces the intensity of competition in a market.

4. “Competition” refers to a process by which firms in a market seek to maximize their profits by exploiting market opportunities more effectively than other firms in the market.

#### Prefer it---

#### 1---Limits---sectors are unbounded, permitting any procedural change to all industries

#### 2---Ground---centralizes generics with literature prominence

## Regs CP

#### The United States federal government should ban all patents on living organisms including new “compositions of matter” through non-antitrust regulations.

#### The counterplan PICs out of anti-trust legislation and the FTC and DOJ as enforcers---other agencies’ regulations solve.

Lawrence Fullerton et al. 08. Joel M Mitnick, William V Reiss, George C Karamanos and Owen H Smith. Sidley Austin LLP. Vertical Agreements The regulation of distribution practices in 34 jurisdictions worldwide. “United States.” https://www.sidley.com/-/media/files/publications/2008/03/getting-the-deal-through--vertical-agreements-2008/files/view-united-states-chapter/fileattachment/united-states-21.pdf

5 What entity or agency is responsible for enforcing prohibitions on anticompetitive vertical restraints? Do governments or ministers have a role?

The Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DoJ) are the two federal agencies responsible for the enforcement of federal antitrust laws. The FTC and the DoJ have jurisdiction to investigate many of the same types of conduct, and therefore have adopted a clearance procedure pursuant to which matters are handled by whichever agency has the most expertise in a particular area.

Additionally, other agencies, such as the Securities and Exchange Commission and Federal Communications Commission, maintain oversight authority over regulated industries pursuant to various federal statutes, and therefore may review vertical restraints for anti-competitive effects.

## FTC Trade-Off DA

#### FTC’s increasing enforcement in privacy now---it’s focused on algorithmic bias.

James V. Fazio 21. Special counsel in the Intellectual Property Practice Group at Sheppard, Mullin, Richter & Hampton LLP, with Liisa M. Thomas, 3/11. “What Is FTC’s Course Under Biden?” https://www.natlawreview.com/article/what-ftc-s-course-under-biden

The new acting FTC chair, Rebecca Kelly Slaughter, recently signaled that the FTC may increase enforcement and penalties in the privacy and data security realm. Slaughter pointed to several areas of focus for the FTC this year, which companies will want to keep in mind: Notifying Consumers About FTC Allegations: Slaughter referred favorably to two recent cases: (1) the Everalbum biometric settlement from earlier this year (which we wrote about at the time); and (2) the Flo Health settlement over alleged deceptive data sharing practices (which we also wrote about at the time). In drawing on these two cases, Slaughter indicated that in future cases the FTC intends to include as part of any settlement a requirement to notify customers of any FTC allegations. This, she said, would allow consumers to “vote with their feet” and help them decide whether to recommend their services to others. FTC Intent to Plead All Relevant Violations: According to Slaughter, another lesson the FTC is taking from the Flo case is to include in the cases it brings all potentially applicable violations of all relevant privacy-related laws. In the Flo case, Slaughter said the FTC should have pleaded a violation of the Health Breach Notification Rule, which requires that vendors of personal health records notify consumers of data breaches. Focus on Ed Tech and COPPA: Given the explosive growth of education technology during COVID-19, the FTC is conducting an industry sweep of the industry. Related to this, the FTC is reviewing its Children’s Online Privacy Protection Act Rule. This goes beyond the refresh the agency did of their FAQs earlier in the pandemic (which we wrote about at the time). For now, Slaughter reminds companies that parental consent is needed before collecting information online from children under the age of 13. Examination of Health Apps: The FTC will take a closer look at health apps, including telehealth and contact tracing apps, as more and more consumers are relying on such apps to manage their health during the pandemic. Overlap Between Competition and Privacy: Slaughter also indicated that it is worth looking at situations where there may be not only privacy concerns, but antitrust as well. Because the FTC has a dual mission (consumer protection and competition) she notes that it has a “structural advantage” over other regulators in that it can look at these issues, especially since -she states- “many of the largest players in digital markets are as powerful as they are because of the breadth of their access to and control over consumer data.” Racial Equality and AI/Biometrics/Geotracking: Slaughter noted that COVID-19 is exacerbating racial inequities. She pointed to the unequal access to technology, as well as algorithmic discrimination (the idea that discrimination offline becomes embedded into algorithmic system logic). The FTC intends to focus on algorithmic discrimination, as well as on the discrimination potentially embedded into facial recognition technologies. (This mirrors concerns that gave rise to the recent Portland facial recognition law, which we recently wrote about). Finally, Slaughter commented on the use of location data to identify characteristics of Black Lives Matter protesters, and said she is concerned about the misuse of location data to track Americans engaged in constitutionally protected speech. Putting it Into Practice: Companies that operate health apps, that are in the education technology space, or that use algorithms or facial recognition tools will want to keep in mind that these are areas of focus for the FTC. And for everyone, keep in mind that the FTC has indicated it will beef up privacy law penalties and will ask for more notification to injured consumers.

#### Antitrust enforcement saps up FTC resources and personnel, which are finite.

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Second, like all antitrust enforcers, Ms. Khan and the FTC will face resource constraints. Bringing antitrust litigation is an expensive and laborious process, often requiring millions of dollars for expert fees and a large army of FTC staff attorneys and taking many months or even years to accomplish. Typically, the FTC can only litigate a handful of antitrust matters at a time. It seems likely that Congress will provide more funding to the FTC in the current environment, but even with these extra resources, the FTC will still have to pick its cases carefully and cannot challenge every deal or every instance of alleged unlawful conduct.

#### That trades off with the necessary resources for privacy enforcement.

John O. McGinnis\* and Linda Sun\*\* 20. \*George C. Dix Professor, Northwestern University, and Associate-Designate, Wilmer Pickering Hale & Dorr LLP. “Unifying Antitrust Enforcement for the Digital Age.” Northwestern Public Law Research Paper No. 20-20. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3669087

The FTC needs more resources to adequately address the nation’s growing privacy concerns. Currently, the FTC oversees both consumer protection—encompassing privacy—and antitrust,249 making the FTC the chief federal agency on privacy policy and enforcement250 and the nation’s de-facto privacy agency.251 The agency has long-standing experience in enforcing privacy statutes252 and also has special privacy assets, such as an internet lab capable of high-quality tech forensics to track invasions of privacy.253 The FTC, however, has failed to keep pace with the massive growth of privacy concerns—a phenomenon also driven by modern technology. Very few Americans feel conﬁdent in the privacy of their information in the digital age.254 According to a 2019 study, over 80% of Americans feel that they have little to no control over the data collected on them by companies and the government.255 To adequately address privacy concerns, the FTC needs more resources.256 The agency has been explicit that it needs more manpower to police tech companies. In requesting increased funding from Congress, FTC Director Joseph Simons said the money would allow the agency to hire additional staff and bring more privacy cases.257 A former director of the FTC’s Bureau of Consumer Protection, which houses the privacy unit, has called the FTC “woefully understaffed.”258 As of the spring of 2019, the FTC had only forty employees dedicated to privacy and data security, compared to 500 and 110 employees at comparable agencies in the UK. and Ireland, respectively.259 Without more lawyers, investigators, and technologists, the FTC will be forced to conduct privacy investigations less thoroughly, and in some cases, forgo them altogether.260 Currently, the FT C’s resources are spread thin across multiple missions, to the detriment of its privacy efforts. Removing the agency’s antitrust responsibilities would reallocate resources from the antitrust department to its privacy unit and other areas of consumer protection. Further, it would free up the scarce time of the commissioners to oversee this essential effort.261

#### Unchecked algorithmic bias risks massive inequality and extinction.

Mike Thomas 20. Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn. THE FUTURE OF ARTIFICIAL INTELLIGENCE: 7 ways AI can change the world for better ... or worse, Updated: April 20, 2020, <https://builtin.com/artificial-intelligence/artificial-intelligence-future>

Klabjan also puts little stock in extreme scenarios — the type involving, say, murderous cyborgs that turn the earth into a smoldering hellscape. He’s much more concerned with machines — war robots, for instance — being fed faulty “incentives” by nefarious humans. As MIT physics professors and leading AI researcher Max Tegmark put it in a 2018 TED Talk, “The real threat from AI isn’t malice, like in silly Hollywood movies, but competence — AI accomplishing goals that just aren’t aligned with ours.” That’s Laird’s take, too. “I definitely don’t see the scenario where something wakes up and decides it wants to take over the world,” he says. “I think that’s science fiction and not the way it’s going to play out.” What Laird worries most about isn’t evil AI, per se, but “evil humans using AI as a sort of false force multiplier” for things like bank robbery and credit card fraud, among many other crimes. And so, while he’s often frustrated with the pace of progress, AI’s slow burn may actually be a blessing. “Time to understand what we’re creating and how we’re going to incorporate it into society,” Laird says, “might be exactly what we need.” But no one knows for sure. “There are several major breakthroughs that have to occur, and those could come very quickly,” Russell said during his Westminster talk. Referencing the rapid transformational effect of nuclear fission (atom splitting) by British physicist Ernest Rutherford in 1917, he added, “It’s very, very hard to predict when these conceptual breakthroughs are going to happen.” But whenever they do, if they do, he emphasized the importance of preparation. That means starting or continuing discussions about the ethical use of A.G.I. and whether it should be regulated. That means working to eliminate data bias, which has a corrupting effect on algorithms and is currently a fat fly in the AI ointment. That means working to invent and augment security measures capable of keeping the technology in check. And it means having the humility to realize that just because we can doesn’t mean we should. “Our situation with technology is complicated, but the big picture is rather simple,” Tegmark said during his TED Talk. “Most AGI researchers expect AGI within decades, and if we just bumble into this unprepared, it will probably be the biggest mistake in human history. It could enable brutal global dictatorship with unprecedented inequality, surveillance, suffering and maybe even human extinction. But if we steer carefully, we could end up in a fantastic future where everybody’s better off—the poor are richer, the rich are richer, everybody’s healthy and free to live out their dreams.”

## Japan DA

#### New antitrust is applied globally---offends allies

Herbert Hovenkamp 03. Ben V. & Dorothy Willie Professor of Law and History, University of Iowa. “Antitrust as Extraterritorial Regulatory Policy,” 48 Antitrust BULL. 629 (2003).

Today few of us are sympathetic with the view that the common law exists apart from and somehow transcends the jurisdiction of the courts that make it. Nevertheless, there is a powerful sense in which the rules of antitrust law are regarded as "natural," while explicitly regulatory rules are considered to be purely local, territorial, or political. This view is given considerable support by a powerful neoclassical economic model that views markets as natural, in the sense that they exist separate and apart from state policy making. 32

Within this model antitrust law is a kind of background umpire that does not make first instance choices about price, quantity, quality, new entry and the like, but that does limit the anticompetitive exercise of market power. Antitrust operates as a kind of "macro" version of contract law. The common law of contracts is designed to facilitate and protect the utility of individual private bargains; antitrust is designed to do much the same thing, but for markets as a whole. Under this conception a well defined set of antitrust principles always operates in the background, so to speak, permitting private bargaining to proceed without interference in the great majority of instances, but intervening when competitive processes go awry. Further, widespread agreement exists both inside and outside the United States on a set of core principles pertaining to such things as naked price fixing, market division agreements, and the like. Within this core, problems of extraterritoriality have largely been limited to the technical ones of devising appropriate jurisdictional rules and remedies.

In contrast, the power to regulate is different. Under the traditional view of regulation the power to set price, quantity, quality, or the right to enter a market emanates in the first instance from the government. Further, although there is widespread economic agreement on fundamental principles, regulatory design is much more specific to the sovereign-more likely to reflect the demographics, industrial or employment base, or politics of the particular state imposing the regulation.

For example, nearly all of the 50 states of the United States have an antitrust law. With relatively few exceptions, however, the substantive coverage of these antitrust laws is the same, and mimics federal law. Many states have court decisions or even legislative enactments stating that federal antitrust law should govern the interpretation of that particular state's antitrust law as well. 33 The result is that the coverage of state antitrust law is remarkably similar from one state to the next. But one can hardly say the same thing about each state's regulation of land use, power generation and distribution, taxicabs, liquor pricing, and the like. Whatever homogeneity regulatory theory might produce, the politics of regulation virtually guarantees jurisdiction-specific outcomes.

But homogeneity in antitrust policy also begins to break down when antitrust law moves beyond its fundamental neoclassical concern with cartels or well-defined exclusionary practices, and into areas where its role is more controversial or marginal. This is often the case when the antitrust laws are applied in recently deregulated markets. For example, a common antitrust problem that arises in deregulated industries falls under the general rubric of unilateral refusals to deal. In order to encourage competition, newly deregulated firms may be forced to share their facilities, information, intellectual property, or other assets with new rivals. Devising reasonable "nonregulatory" rules governing refusals to deal in such markets has always extended the antitrust laws to the margin of their competence.

Increasingly, American courts seem willing to apply antitrust law to markets regulated by foreign nations under circumstances where regulatory laws themselves would never reach. For example, neither Congress nor a state legislature would very likely attempt to regulate the customer service or information provision practices of a foreign national's telephone company. But both federal and state courts have done precisely that under the guise of antitrust enforcement.3 4

Antitrust policy makes this thinkable as a result of the confluence of two sets of doctrines. First is the expansive reach of our antitrust laws to practices that have a substantial effect on United States commerce. Second is the very narrow conception of comity that applies in antitrust cases.

As a general matter, comity concerns in the international conflict of laws requires the court to consider the competing interests of domestic and foreign sovereigns. 35 After a half century of debate over the meaning of comity in international Sherman Act adjudication, the Supreme Court gave the doctrine an extraordinarily narrow meaning in the Hartford Fire case.36 That case involved an alleged insurance boycott in which Lloyd's of London participated as reinsurer. Lloyd's conduct-agreeing with some United States insurers not to write reinsurance policies for other United States insurers who wanted to write policies with broader coverage-was neither forbidden nor compelled by British law. To the defendant's claim of comity the Supreme Court replied that the provisions of the Sherman Act governing jurisdiction over transactions in foreign commerce were mandatory. As a result, a federal court could not simply decline jurisdiction on the basis of some general balancing of interests. 37 Rather, "comity" permits a federal court to decline jurisdiction only when there was a "conflict" between the law of the foreign sovereign and United States law. Further, "conflict" was defined not under choice of law principles, but more absolutely, as occurring only when the foreign law compelled the conduct at issue. 38

Perhaps significantly, the activity of the London reinsurers was very likely reachable under United States antitrust law even under ordinary interest analysis principles. British law was found by the Supreme Court to be indifferent to what the London reinsurers were doing. Further, what they were doing was agreeing not to insure against liability for particular toxic pollution risks in the United States, and risk of liability is of course measured in relation to the physical environment and legal regime in which the injury occurs. 39 As a result, the London reinsurers were selling a product especially targeted for United States markets and allegedly participating in a boycott designed to keep broader coverage insurance policies out of that market.

But Hartford Fire's definition of comity is significantly problematic under deregulation. To the extent a foreign sovereign deregulates a public utility or common carrier, that firm enjoys greater discretion to make its own decisions. As a result, considerations of comity may no longer preclude a Sherman Act suit. What makes this especially problematic is the way that the Sherman Act has been used in the United States as a kind of replacement for the regulatory agency. Under comprehensive agency regulation a filed tariff plus regulatory oversight would have governed numerous acts by regulated firms, including pricing, entry into new markets, interconnection obligations and other duties to deal.40 Government relaxation of regulatory restrictions has given firms some discretion over these things but in the process has substituted the antitrust courts as governmental supervisor. In some situations this causes little difficulty because regulation may have been misapplied to a competitively structured industry to begin with.41 In other situations, such as long-distance telecommunication, a competitive environment has developed because of changes in technology, and topto-bottom price and product regulation is no longer necessary.42

But in a third class of situations the application of the antitrust laws is much more "regulatory" and more difficult to defend. These are the cases where unilateral conduct of the kind that was historically supervised by the regulatory agency now comes under antitrust jurisdiction. For example, under the essential facility doctrine a federal court of general jurisdiction may be asked to apply antitrust law to determine the scope of a formerly regulated firm's duty to interconnect with rivals. The circuit courts have applied the doctrine frequently in the telecommunications industry,43 but also to railroads" and natural gas pipelines.4 5 Problematically, supervising interconnection requirements involves the court in highly technical questions about the scope of the duty to deal and perhaps even about the price at which the deal must be made. In these cases we have not really "deregulated" at all; rather, we have simply substituted regulation by a government agency for regulation by a court, often through the highly inefficient and uncertain process of a jury trial. To do that in a purely domestic situation is ill-advised enough, but to do it abroad by taking advantage of the expansive jurisdictional reach of the Sherman Act is completely unjustified.

IV. Extraterritorial antitrust and foreign deregulation

As expansive as the regulatory power asserted by the United States sometimes becomes, it does not generally interfere directly into foreign governments' regulation of their own highly regulated industries. But to a large extent modem antitrust has inherited the regulatory attitude expressed by the Western Union decision discussed above. For several reasons, the idea that the United States Antitrust laws are jurisdictionally exceptional can produce overreaching that is offensive to foreign prerogatives. First, the United States antitrust laws are extremely general and make no distinction between ordinary competitive firms and public utilities or common carriers; the same rules purport to apply to all business firms. Second, the jurisdictional language of the antitrust laws is both mandatory and general to the same extent-that is, the "affecting foreign commerce" language of the basic Sherman Act and the export commerce language of the Foreign Trade Antitrust Improvement Act 6 do not distinguish between regulated and ordinary competitive firms. And third, the limiting doctrines of international law-namely Act of State, foreign sovereign compulsion, foreign sovereign immunity, and comity-do not distinguish among types of firms or types of antitrust complaints. They apply equally to both price fixing, which is at the core of antitrust concern, and to the essential facility doctrine, which lies at or outside its margin.

#### Ends the US-Japan economic alliance

Takaaki Kojima 02. Fellow, Weatherhead Center for International Affairs, 2001-2002. “International Conflicts over the Extraterritorial Application of Competition Law in a Borderless Economy”. https://datascience.iq.harvard.edu/files/fellows/files/kojima.pdf

We are witnessing increasingly widespread and penetrating economic globalization today. As a result of trade liberalization, import restrictions or regulations on trade and investment have decreased substantially, and trans-border business activities face less barrier. At the same time, the role of trans-border business activities, especially those by so-called multinational or global enterprises, have become increasingly important and even dominant in some sectors.

As far as the territorial scope of business activities are concerned, state borders are more or less diminishing to become almost borderless; as for legal regimes, however, sovereign states retain in principle exclusive jurisdiction over their territories and nationals under international law. Business activities are regulated by the domestic laws of sovereign states or by international agreements concluded among sovereign states. The pertinent question is how to coordinate “borderless” business activities within the existing legal regimes governed by sovereign states. In the field of trade law, the measures of each state are restricted by international agreements, in particular under the GATT/WTO regime. In the field of competition law, such an international regime is lacking and the domestic laws of each state regulate private restraints of trade in the relevant markets.

Serious jurisdictional conflicts have transpired in the last several decades between the United States and other states over the so-called extraterritorial application of U.S. antitrust laws on anticompetitive conducts abroad. This problem has also caused diplomatic frictions between the United States and other states, as it concerns state sovereignty. In this essay, the author will review the historical development of international conflicts caused by the extraterritorial application of competition law and attempt to examine the options available to circumvent or solve these conflicts. The main focus will be U.S. antitrust law and its relation with other jurisdictions, mainly the European Union and Japan, considering the grave implications to competition law and policy as well as to the world economy. 2

II. Extraterritorial Application of U.S. Antitrust Laws

Problems concerning the extraterritorial application of U.S. antitrust laws have been discussed in many publications. Of the U.S. antitrust laws, the Sherman Act applies to “commerce … with foreign nations ” (Section 1) without qualifying provisions concerning its territorial scope as “within the United States” (Section 2) or “in any section of the country” (Section 3) as specified in the Clayton Act. In the past, U.S. courts interpreting the Sherman Act of 1890 and other antitrust laws commonly followed the traditional territorial principle with regard to its jurisdictional reach. In the American Banana case (213 U.S. 347 (1909)), where all the acts complained of were committed outside the territory of the United States, including the defendant’s alleged inducements of the Costa Rican government to monopolize the banana trade, the U.S. Supreme Court dismissed the complaint on the ground, inter alia, that acts committed outside of the United States are not governed by the Sherman Act. In this case, the territorial principle in the classic sense was applied.

In later decisions such as the American Tobacco case (221 U.S. 106 (1911)) and the Sisal case (274 U.S. 268 (1927)), jurisdiction was exercised over the defendants on the ground that although the agreements in question were concluded by foreigners outside the United States, jurisdiction was limited to what was performed and intended to be performed within the territory of the United States. In these cases, the territorial principle was applied more flexibly, but it has been observed that this application cannot be argued other than as a sensible and reasonable deployment of the objective territorial theory. 3

An entirely different approach was taken in the Alcoa case (148 F.2d. 416 (1944)), in which foreign companies outside the United States had concluded the agreements. The Court of Appeal for the Second Circuit held it settled law that any State may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders. It went on further to state that the agreements, although made abroad, were unlawful if they were intended to affect imports and did affect them.

This theory of the intended effect (the effects doctrine) elaborated in the Alcoa case was criticized by many as an excess of jurisdiction under public international law. For instance, R.Y. Jennings noted that “in this new guise it apparently comprehends the exercise of jurisdiction over agreements made abroad, by foreigners with foreigners provided only that the agreement was intended to have repercussions upon American imports or exports,” 4 while F.A. Mann argued that “the type of effect within the meaning of the Alcoa ruling has nothing in common with the effect which by virtue of established principles of international jurisdiction confers that right of regulation.” 5 Neverthele ss, since the Alcoa case, U.S. courts have continued to follow the new jurisdictional formula of the effects doctrine.

In response to excessive application of U.S. antitrust laws, especially with respect to courts’ orders to produce documents such as subpoena duces tecum located abroad, a considerable number of states have issued diplomatic protests. Australia, France, the United Kingdom, the Netherlands, and New Zealand have even enacted blocking legislation. 6 The protesting states maintain that taking evidence abroad, including an order to produce documents, is an exercise of extraterritorial enforcement of jurisdiction that, under international law, requires the consent of the state where the evidence is located. The United Kingdom has been one of the strongest opponents to U.S. claims of extraterritorial jurisdiction. The U.K. government stated for instance that “HM Government considers that in the present state of international law there is no basis for the extension of one country’s antitrust jurisdiction to activities outside of that country of the foreign national.” 7 The Protection of Trading Interest law was enacted in 1980, which provides to extensively thwart the extraterritorial application of U.S. antitrust laws. The U.K. government invoked the provisions in the Laker Airways case (1983 W.L.R. 413) in 1983.

Having faced the antagonistic reactions of other states, U.S. courts began to show some restraint in assuming extraterritorial jurisdiction. In the Timberlane case (549 F.2d. 9 th Cir. (1976)), the court concluded that it had jurisdiction over alleged anticompetitive conducts in Honduras but refrained from asserting extraterritorial jurisdiction after having applied three tests: first, whether the challenged conduct had had some effect on the commerce of the United States; second, whether the conduct in question imposed a burden on U.S. commerce; and third, whether the complaint’s interests of and links to the United States were sufficiently strong vis-à-vis those of other nations to justify an assertion of extraterritorial authority. The Foreign Trade Antitrust Improvements Act enacted in 1976 applies to foreign conduct that has a direct, substantial and reasonably foreseeable effect on U.S. commerce, The U.S. enforcement agencies, the Department of Justice (DOJ) and the Federal Trade Commission (FTC), have adopted this jurisdictional rule of reason formula since the Enforcement Guidelines for International Operations of 1988. However, divergent views exist as to whether the third test of balancing the interests of other states is a rule of international law or just a comity. 8 Furthermore, not all U.S. courts have consistently applied the test of balancing interests. 9

In 1993, the Supreme Court decision in the Hartford Fire Insurance case (113 S. Ct. 2891 (1993)) reaffirmed the effects doctrine, stating that the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States. The Court then took a restrictive view on the test of balancing interests, stating that the only substantial question is whether there is a true conflict between domestic and foreign law, and held that no such conflict seemed to exist because British law did not require defendants to act in a manner prohibited by U.S. law. 10

Japan maintains the territorial principle and rejects the effects doctrine, stating that the effects doctrine cannot be regarded as an established rule of international law. In the view of the Government of Japan, the extraterritorial application of U.S. domestic laws (including U.S. antitrust laws) based on the effects doctrine is not allowed under general international law. 11 In the Nippon Paper case, where a Japanese company was prosecuted under the Sherman Act, the Japanese government submitted a brief of amicus curiae where it stated, inter alia, that the extraterritorial application of the Sherman Act to a conduct of a Japanese company engaged in business in Japan is unlawful under international law. 12 Nonetheless, the U.S. Supreme Court affirmed the Court of Appeal decision, which assumed the extraterritorial application of the Sherman Act to a criminal case for the first time (118 S. Ct. 685 (1998)).

#### Alliance key to prevent Chinese challenges to the LIO---recovery now but not guaranteed

Shihoko Goto 21. deputy director for geoeconomics and senior associate for Northeast Asia at the Wilson Center. "When Trade No Longer Hampers U.S.-Japan Ties". 4-20-2021. https://www.wilsoncenter.org/blog-post/when-trade-no-longer-hampers-us-japan-ties

The April 16th meeting between President Joe Biden and Japanese Prime Minister Yoshihide Suga marked several milestones: not only was it the first foreign leader’s visit to the Biden White House, but it was also the first visit to the United States by Yoshihide Suga as the Japanese prime minister. It was also the first in-person summit meeting between the United States and Japan since the outbreak of a global pandemic. It marked a number of firsts in terms of content too, not least that it was the first time since the 1980s in which trade was not a sore point of contention between the two sides. Instead, trade relations projected as a way forward for further bilateral cooperation in confronting the China threat.

That isn’t to say trade relations between Japan and the United States are now smooth sailing. The U.S. trade deficit with the world’s third-largest economy runs to nearly $68 billion, and although the two sides signed a merchandise trade deal in 2019, the Japanese auto industry remains a point of contention for the United States. Indeed, Japan’s auto exports account for about $54 billion, or close to 80 percent, of the overall trade deficit. Meanwhile, the Biden administration is not expected to lift tariffs on steel and aluminum anytime soon, nor is it expected to make efforts to join the CPTPP in the near future, much to the frustration of Tokyo.

Yet instead of trying to negotiate a breakthrough on the trade front, the Biden-Suga meeting focused on bilateral economic relations based on their shared threat of dealing with China’s ambitions to challenge the regional status quo. Until recent months, Tokyo had aspired to maintain solid relations with China whilst furthering ties with the United States, most notably by endeavoring to decouple economic interests with Beijing from the security threat that China has increasingly been posing upon Tokyo. After the joint 2+2 joint security meeting in Tokyo in March, however, the two countries declared that China’s behavior is “inconsistent with the existing international order, presents political, economic, military, and technological challenges to the Alliance and to the international community.”

Since then, Tokyo has moved even closer to Washington publicly in pushing back against China, as the bilateral statement noted “the importance of peace and stability across the Taiwan Strait,” marking the first time since 1969 that Japan and the United States publicly referred to Taiwan which remains a core interest for China. In short, Japan’s hedging against the United States and maintaining a balancing act between China and the United States is now over. Not only is its security interests even more closely aligned with that of the United States, Japan’s economic interests are now more intertwined with that of the United States than ever.

Rather than focusing on the trade balance, Tokyo and Washington’s economic relations will concentrate more on economic resilience and maintaining free and fair economic rules of engagement in the Indo-Pacific. At the same time, the two countries are expected to work more closely together on competing against China in emerging technologies, from 5G to AI and information sciences.

For Japan, one of the biggest takeaways from the Biden-Suga meeting will be that the days of Japan posing an economic threat to the United States are now over. It will also be putting increasing pressure not only for Tokyo to be prepared to fight back against China on the economic as well as security fronts together with Washington, but it will also push Tokyo to step up its own efforts to compete in the innovation economy that goes beyond manufacturing.

#### ILO is sustainable and prevents great power war---preventing Chinese aggression is key

Alan W. Dowd 21. Senior fellow with the Sagamore Institute, where he leads the Center for America’s Purpose. "Capstones: China’s Dream, the World’s Nightmare – Sagamore Institute". No Publication. 4-5-2021. https://sagamoreinstitute.org/capstones-chinas-dream-the-worlds-nightmare/

If China is indeed the future, if China is primed to “rule the world,” if China remakes the international order in its image, it won’t be pretty. A future dominated by the People’s Republic of China (PRC) will be demonstrably worse than the world we know. Just look at how Xi Jinping’s regime treats its own subjects—and plays its current role on the global stage.

NO RIGHTS

Those predictions aren’t outlandish. China already is the world’s top manufacturing nation, top exporting nation and second-largest economy. The PRC was the only major economy to emerge from 2020 claiming GDP growth (if we are to trust Beijing’s books). In the pandemic’s wake, China dislodged the U.S. as the world’s primary destination for foreign direct investment. PRC-backed firms are leaders in the global 5G and AI race. On the strength of a 517-percent binge in military spending since 2000, China bristles with anti-ship and anti-aircraft missiles, deploys a high-tech air force, has a growing and openly hostile presence in space, is doubling its nuclear arsenal, and boasts a 350-ship navy (now the world’s largest). Beijing’s growing cultural reach is evident in everything from its influence over Hollywood, to its puppet-master relationship with the NBA, to its 480 Confucius Institutes (designated by Washington as “part of the Chinese Communist Party’s global influence and propaganda apparatus”).

As President Joe Biden concludes, China is “the only competitor potentially capable of combining its economic, diplomatic, military, and technological power to mount a sustained challenge to a stable and open international system.”

Xi is doing exactly that. But the China challenge starts inside the PRC.

Xi is pursuing what he calls the “China Dream,” which enfolds goals such as sustained economic development, military power modeled after and matching that of the U.S., ideological conformity, “rejuvenation of the Chinese nation” and “complete unification of our country.” Making Xi’s “China Dream” come true is turning into a nightmare for his subjects.

Before leaving his State Department post, Secretary of State Mike Pompeo described what Xi is doing to Uighur Muslims as “genocide,” noting that Beijing has “forced more than a million people into internment camps in the Xinjiang region” and detailing “torture, sexual abuse…rape, forced labor…and unexplained deaths in custody.” As he took the baton from Pompeo, Secretary of State Antony Blinken agreed, affirming that “The forcing of men, women and children into concentration camps, trying to, in effect, re-educate them to be adherents to the ideology of the Chinese Communist Party—all of that speaks to an effort to commit genocide.”

The U.S. government isn’t alone. The Uighur Muslim region, according to a UN human-rights watchdog, “resembles a massive internment camp…a no-rights zone.” More accurately, all of China is a no-rights zone.

Xi’s China is a place where Christian churches are smashed and followers of Christ are sent to reeducation camps; Buddhist temples are bulldozed; Uighur men are packed into freight trains, Uighur women are forcibly sterilized and Uighur babies are forcibly aborted; and bishops and Nobel Peace Prize laureates die in prison. Under Xi, “Religious persecution has increased…with four communities in particular experiencing a downturn in conditions—Protestant Christians, Tibetan Buddhists, and both Hui and Uighur Muslims,” Freedom House reports. Amnesty International adds that “hundreds of thousands of people” are subjected to arbitrary arrest and detention in China, many of them for “peacefully exercising their rights to freedom of expression and freedom of belief.”

There’s a brutal logic to Xi’s brutal response to religious activity. The common denominator of most every religion is that there’s something above, something beyond, something bigger, more enduring and more important than the state. That notion represents a mortal threat to the legitimacy and durability of Xi’s regime, which is founded on the premise that people exist to serve the state—not to use their God-given gifts to serve others and God.

Xi’s capacity to control is growing ever more insidious. The PRC’s new “social credit system” is using mega-databases to monitor and catalogue every aspect of life of China’s 1.3 billion people—financial transactions, civil infractions, social-media postings, online activity—and then reward or sanction Xi’s subjects by feeding all that information to the National Development and Reform Commission, banking system and judicial system. PRC subjects with good social credit scores enjoy waived fees, lower utility bills, promotions and expedited overseas-travel approval, while those with poor social credit scores can be fired from their jobs, expelled from school, blocked from universities, or barred from accessing transportation.

An Orwellian surveillance state, more than a billion people denied religious freedom and other human rights, uncounted numbers tortured in reeducation camps, physicians jailed for following the Hippocratic Oath—that’s the kind of future and the kind of world Xi wants to build. As dissident leader Xu Zhangrun observed in the wake of Beijing’s criminal mishandling of COVID-19, “A polity that is blatantly incapable of treating its own people properly can hardly be expected to treat the rest of the world well.”

NO LIMITS

That idea—the notion that the PRC is incapable of treating the world any better than it treats its own—is not particularly profound. After all, this is a regime that over the decades has erased some 35 million of its subjects and tortured millions more. Regimes like this see no limits on their power. Since they believe nothing is above the state, they rationalize everything they do in the name of the state, the revolution, the Supreme Leader, the Dear Leader, the Core Leader (Xi’s new title). With no moral constraints on what they do, they believe their ends always justify their means.

That backwards worldview informs every aspect of decision-making in the PRC. This doesn’t mean Washington should refuse to talk with Beijing. But we must be ever vigilant when dealing with Xi. A regime that can justify imprisoning, torturing and killing its own people for peacefully practicing their faith can and will justify anything: seizing foreign lands, annexing international waterways, absorbing free peoples, stealing proprietary information, leveraging a pandemic to gain geopolitical advantage, breaking treaties. The godless USSR did those sorts of things, and so has the godless PRC.

“It is difficult to imagine that a government that continues to repress freedom in its own country,” President Ronald Reagan said of the USSR, “can be trusted to keep agreements with others.” And here we are yet again.

Experts in policy analysis, academia and military-security affairs conclude that Xi’s response to COVID-19 “was in breach of international law.” It pays to recall that COVID-19 was a local public-health problem that metastasized into a global pandemic due to Beijing’s incompetence or intention (either cause is reason not to entrust the future to Xi); that Xi’s regime lied about human-to-human transmission; that Xi’s regime willfully allowed millions to leave the epicenter in Wuhan for destinations around the world; that Xi’s regime carried out a premeditated plan to hoard 2.5 billion pieces of protective equipment as the virus swept the globe; that Xi’s regime blocked scientists from sharing findings about genome sequencing for weeks; that Xi’s regime continues to refuse to cooperate with international health agencies.

Xi’s intervention in Hong Kong and assertion of rule by remote-control is a brazen violation of an international treaty.

In and above the East China Sea, Beijing is constantly violating Japanese airspace and illegally loitering PRC coast guard vessels in Japanese waters. All the while, Beijing illegally claims some 90 percent of the South China Sea. Xi has backed up those claims by building 3,200 acres of illegal islands beyond PRC waters. These islands feature SAM batteries and warplanes. Xi promised the PRC wouldn’t militarize these islands. But as America and its allies learned at enormous cost last century, words don’t matter to men like Xi. Strength and the will to wield it are all that matters. Xi has both.

His goal is to control the resource-rich South and East China Seas, assert sovereignty claims in fait accompli fashion, and bring Chinese-speaking lands under his heel. Hong Kong—where only PRC-approved “patriots” are allowed to serve in government—was his first objective. Taiwan is next. Xi has made clear that democratic Taiwan “must and will be” absorbed by the communist Mainland. “We make no promise to abandon the use of force,” he warns. That explains Beijing’s ground-unit exercises, naval drills and bomber sorties around the island democracy.

Nor are Xi’s dreams and designs limited to his immediate neighborhood. Beijing is buying loyalty via development projects (see the Belt and Road Initiative), gaining a toehold in strategically located regions (see PRC control over ports in 18 countries), building an authoritarian bloc (see Russia, Serbia, North Korea, Iran, Venezuela), and fielding a power-projecting military capable of challenging the Free World across every region and every domain—land, sea, air, space and cyberspace. Xi’s relentless cybersiege of the Free World is siphoning away inventions, discoveries, technologies and wealth, penetrating defense firms, and interfering in elections.

For those with eyes to see—who know about the laogai camps and brutalization of Muslims and oppression of Tibet and assault on Christianity—none of this comes as a surprise. What’s surprising is that for 40 years, the trade über alles caucus convinced itself that such a regime could somehow be reformed by access to Buicks and Kentucky Fried Chicken.

TAKING AIM

Xi vows to build what he calls “a more just and reasonable new world order”—one that would supplant the liberal democratic order the United States and its allies began building after World War II. Importantly, the PRC not only has the intent to build a new world order; it has the resources and capabilities to do so—which helps explain why those who designed and uphold the existing world order are answering China’s challenge.

The PRC is a country of 1.3 billion people. Its GDP is already $14.1 trillion. Its economic tendrils—trade, banking, manufacturing, logistics, shipping, technology, super-computing, artificial intelligence—stretch into every part of the globe. All of this is fueling the PRC’s relentless military modernization and buildup. The PRC’s annual military expenditure is at least $261 billion. (Beijing recently announced an increase in military spending of 6.8 percent for 2021). The PRC has a 2-million-man military, the world’s largest navy and an intense focus on its neighborhood.

None of this would be a particularly worrisome if China embraced the values of liberal democracy—the rule of law, individual freedom, religious liberty, free enterprise and free trade, majority rule with minority rights. These are the foundation stones of what Churchill and FDR envisioned when they drafted the Atlantic Charter in 1941. Their vision led to what some call the “rules-based democratic order,” others the “liberal international order,” still others the “free world order.” These terms aim to describe how the peoples of the West have tried to make the world work and indeed manage the world: They embraced and encouraged democratic governance; developed rules and norms of behavior; promoted liberal (freedom-oriented) political and economic institutions; and called upon governments to live up to the responsibilities of nationhood by respecting international borders and promoting good order within those borders. The result has been an unparalleled spread of prosperity, an unprecedented expansion of free government and an unexpected remission of great-power war (which had become an increasingly-destructive feature of the centuries leading up to 1945).

To be sure, many regimes reject the values of liberal democracy. But the PRC, like the USSR before it, not only rejects those values; it possesses the military-technological-industrial-economic assets to challenge those values, erode the liberal international order built upon those values, and forge a new international order or at least bend the existing order toward its own goals. But don’t take my word for it.

“Some seek to challenge the international order—that is, the rules, values and institutions that reduce conflict and make cooperation possible among nations,” Blinken and Defense Secretary Lloyd Austin warn, pointedly adding that “China in particular is all too willing to use coercion to get its way.”

Former national security advisor Gen H.R. McMaster concludes that PRC “leaders believe they have a narrow window of strategic opportunity to…revise the international order in their favor.”

Before he retired as Indo-Pacific commander ,Adm. Phil Davidson told the Senate Armed Services Committee that Xi and his lieutenants are “accelerating their ambitions to supplant the United States and our leadership role in the rules-based international order.”

A NATO panel noted late last year that Beijing’s “approach to human rights and international law challenges the fundamental premise of a rules-based international order.”

These political, diplomatic and military leaders recognize that the liberal order has promoted the peace and prosperity of the Free World for nearly 75 years. But it doesn’t run on autopilot. If we want the benefits of a liberal order that sustains our way of life, we need to sustain the liberal order. As Robert Kagan of the Brookings Institution observes, “The present order will last only as long as those who favor it and benefit from it retain the will and capacity to defend it.” He adds, “Every international order in history has reflected the beliefs and interests of its strongest powers, and every international order has changed when power shifted to others with different beliefs and interests.”

Indeed, the liberal order and its guarantors have arrived at a turning point or breaking point: Either they will marshal the means and will to update, strengthen and preserve the existing order, or Beijing will dramatically transform it. Xi’s callous treatment of his own subjects and contempt for international norms offer a glimpse of what his “more reasonable new world order” would look like.

## Cap K

#### Heralding settler colonialism as a distinct field misapprehends power as separate from postcolonial capitalism – using the analytic of settlement fractures political solidarities

Bhandar 16 (Brenna, Senior Lecturer in Law at SOAS, Acts and Omissions: Framing Settler Colonialism in Palestine Studies, <http://www.jadaliyya.com/pages/index/23569/acts-and-omissions_framing-settler-colonialism-in->;)

Settler Colonialism and Racial Capitalism

The forging of a new academic field of settler colonial studies risks potentially creating unnecessary binaries between studies of colonialism and settler-colonialism. It is clear that techniques of colonial dispossession traveled throughout networks of trade and leisure established during and throughout the British Empire. Such tools include the surveillance and criminalization of colonized populations, land appropriation, resource extraction, the perversion or indeed, attempted erasure, of native legal systems, and control over the mobility and political citizenship of colonized populations. English colonial administrators and freelance entrepreneurs traveled, during the nineteenth century, between the Indian subcontinent, Australia, Canada, New Zealand, the Caribbean, the United States, the African continent, and of course the United Kingdom. They imported and exported the legal and political infrastructures required for colonial modes of expropriation. With the advent of the Mandate system, Palestine became another scene of exchange and implementation of European colonial modes of governance tested elsewhere. While many scholars have revealed the formative influence of European models of nationalism and colonial ideology on early Zionist movements (Raz-Krakotzkin 2007; Lloyd 2012), the detailed work of excavating the way in which the political and legal techniques of dispossession travelled between different colonial sites remains underexplored. (Although see Lowe, 2014 an Saldaña-Portillo 2016 for exemplary exceptions to this claim). Another binary inherent to the settler colonial analytic is that between the colonizer and colonized. While adopting a settler colonial framework is critical to analyzing Israel’s modus operandi as a colonial power, there is a need to contextualize Israel’s settler colonial project within the particular class and racial differences inside Israel and amongst Palestinians. Ella Shohat’s critical work on the racial hierarchy within Israel’s settler society is a strong example that highlights the historical marginalization of the Mizrahim, Jews of Arab origin. Racialized immigrants occupy both the position of settler in relation to Indigenous communities and the subaltern in relation to the dominant place of the white European settler. Some scholars in North America, and particularly in Hawai’i have grasped how the racialization of particular immigrant communities in settler states complicates the settler colonial framework. On the other hand, a settler colonial framework must also contend with the emerging class differences in Palestinian society exacerbated by the impact of the Oslo Accords. This is especially relevant when contending with the question of how Palestinians can challenge the logic of the Oslo process while the Palestinian Authority, adhering to a fundamental neoliberal agenda (Hanieh 2013), remains intact. The Palestinian Authority continues to formulate Palestinian liberation in terms of truncated statehood on small sections of Palestinian land and celebrates symbolic acts such as raising the Palestinian flag at the United Nations while prospects of Palestinian sovereignty over land continue to diminish daily. Sadly, the PA’s focus continues to be building a neoliberal state apparatus as a way to “convince” Israel and international donors that Palestinians are able to run their affairs. For all intents and purposes, Israel has succeeded in outsourcing its military occupation to a segment of Palestinians - this is evident in the relatively large budgets of the security forces of the PA and the continued security coordination with Israel. In our view, such differences within both the settler society and the colonized need to be brought out and fully incorporated into the settler colonial analytical framework. Racially inscribed dispossession and the capitalist modes of accumulation that subtend expropriative practices have developed in spatially and temporally differentiated ways in the colonies, as elaborated by scores of post-colonial theorists. In other words, capitalist development in the colonies has not mirrored the transition from feudal economies to capitalist ones in Europe. The terms “postcolonial capitalism” and “racial capitalism” both denote ways of understanding capitalist forms of dispossession that profit from, and reinforce class hierarchies, patriarchal formations, and racist ideologies lodged in colonial imaginaries that persist into the present. These terms do not neatly fit into a settler-colonial framework and yet are critical to understanding the political-economic, juridical and social complexities across various sites of inquiry. Forcing them into a single analytical category risks losing this richness and undermining forms of political solidarity across colonized spaces. Darwish’s masterful poem, “The Red Indian’s Penultimate Speech to the White Man” begins with an epigram from the Duwamish Chief Seattle. The dispossession of native land that Columbus’ ill-fated voyage inaugurated, binds together the fates of Native Americans and Palestinians, who resist colonial dominance over land, time, history, memory, and place. As Chief Seattle asserts, “there is no Death here, there is only the change of worlds.” We in turn are looking for our own counter-narration, a language to explain the ongoing violence of dispossession in multiple contexts. We are reminded of the words of Mike Krebs and Dana Olwan: We want to build solidarity without reproducing and enacting the same colonial logics and asymmetric relationships of power on which settler colonialisms hinge. We believe that our futures are connected and that we are especially powerful when we enact solidarity by words and actions. To expect solidarity, we must be willing to give it, share it, and maintain it. To do otherwise is to risk producing solidarity on the very colonial terms that our movements seek to challenge and undo.

#### Antitrust is a psyop used to pacify the working class and map competition onto subjectivity

Lebow 19 [David Lebow – Lecturer on Social Studies at Harvard University and lawyer, “Trumpism and the Dialectic of Neoliberal Reason,” Perspectives on Politics 18(2):380-398, doi:10.1017/S1537592719000434]

I. Neoliberal Reason

As Michel Foucault and others have argued, neoliberalism entails far more than an economic doctrine favoring deregulated markets.4 It is a novel form of governmentality—a rationality linked to technologies of power that govern conduct, not just through direct state action but through liberty itself.5 Not isolated to the traditionally demarcated sphere of economics, neoliberal society entails a whole economic-juridical order.

The central program of neoliberal governmentality is the absolute generalization of competition as a universal behavioral norm. Whereas in liberal thought, the root principle of capitalism was exchange of equivalents, for neoliberal reason it is competition entailing inequality. The key result of market processes goes from specialization to selection. The competitive market is the exclusive site of rationality. It processes information, indicated by price, and is the only mechanism of producing knowledge, defined as what is profitably utilizable. Because consumers are free to refuse inferior goods or services, the price mechanism of the market system ensures optimal solutions and maximal satisfaction of preferences.

Liberal capitalism, as Karl Polanyi argued, required the construction of “fictitious” commodities like land and labor.6 These abstract, exchangeable factors of production had to be disembedded from concrete non-market social relations, norms, and values. Instead of merely disembedding commodities, neoliberalism intervenes to make competitive mechanisms regulate every moment and point in society. It strives to build an empire of market choice that invades every domain of life, and deposes all other social, political and solidaristic institutions and values.

Neoliberalism does not allege that markets are natural; competition must be constructed. Rather than endorsing laissez-faire overseen by a night watchman, it stipulates a strong state engaged in permanent vigilance, activity, and intervention to maintain artificial competition. It must not plan outcomes, which would upset the market’s innate rationality, and must be insulated from political disturbances. Economic interventionism leads down the road to serfdom; fascism and unlimited state power are its necessary results. A “minimum of economic interventionism” on the “mechanisms of the market” must be accompanied by “maximum legal interventionism” on the “conditions of the market.”7 Fixed, formal rules make up an economic constitution that inhibits planning, repulses political disruptions, and impartially safeguards competition. The state is the executor of the market and growth is the basis of public legitimacy. Governance depoliticizes public power, promotes ostensibly post-ideological technical problem-solving by experts, and relies on “best-practices” that dissolve the distinction between public and private organization.8

Unlimited generalization of competition yields an enterprise society in which calculations of supply/demand and cost/benefit become the model of all social relations. Neoliberal reason renders homo economicus, based on this model of the enterprise, the exhaustive figuration of human subjectivity. The center of economic thought shifts from labor and processes of production, exchange, and consumption to human capital and rational decision-making under conditions of scarcity. Capital is everything that can generate future income; wages are reconceived as income from capital. Labor is no longer comprehended as a commodity exchanged for a wage, but as a combination of human capital (the worker’s education and abilities) and the income stream it generates. This neoliberal subject is an aggregate of human capital who invests in his own income-generating abilities.

Neoliberalism replaces the invariant identity of the moral person as a rights-bearing citizen with a formally empty receptacle filled up through enterprising choices. It brushes aside models of freedom as self-rule achieved through moral autonomy or popular sovereignty.9 In the neoliberal “democracy of consumers,” individual consumers together constitute the sovereign that monopolizes the issuance of legitimate commands.10 Sovereign will is expressed not through political channels, but by choices in the “plebiscite of prices.”11 Whereas producers have particular interests like protectionism, consumers have a consensual and common interest; all favor the impartial functioning of market processes. In the neoliberal free society, consumers exercise their right to choose in complete independence.

II. From Keynesian State Capitalism to Neoliberal Deregulation

Situating the 2008 crisis in a historical account of American political and economic development clarifies its broader significance. The early twentieth-century Progressives were disdainful of what they took to be the chaos and waste of fin de siècle laissez-faire society. They strove to build a new American state that would replace the structural and rights-based formalisms of the nineteenth century with direct democracy and expert administration. It took the Great Depression and New Deal to bring into full bloom the Progressive commitment to pragmatic rationality. Thereafter, the “policy state” was authorized to pursue designated social goals and develop the means to accomplish them.12 The slew of New Deal innovations included state oversight of labor negotiations, invigorated antitrust, Keynesian countercyclical deficits to stimulate demand and increase purchasing power, an expansive public sector sheltered from the business cycle, aggressive banking regulation, and social insurance. Regulation and redistribution ensured the conditions necessary for an economic system based on capital accumulation, private property, and corporate profit to endure.

To many, the differences between the New Deal and Nazi political economies appeared less significant than their common response to monopoly capitalism. Both erased boundaries between state and society by politicizing the private sphere and authorizing public bureaucracies to rationalize crisis-prone economies. Frankfurt School member Friedrich Pollock suggested that this common “state capitalism” had solved the contradiction between the forces and relations of production, and thus overcome the economy’s crisis tendencies. It seemed to him that management had become merely technical and “nothing essential” had been “left to the laws of the market.”13 Worries abounded that the private law sphere of property and contract was necessary for individual freedom. Despite salient differences between Nazi and New Deal state capitalism, many feared that intervention into society was a waystation to domination. Unease about the specter of American despotism motivated development of mechanisms to ensure that interventionism did not devolve into arbitrary rule.14 Expertise was one justification and limitation of the policy state. Authority could be safely delegated to a new corps of public-spirited administrators because their scientific knowledge would not only make them effective, but also counsel restraint. Enduring misgivings led later to new laws of administrative process. The procedural state was legitimated by its defenders as being a substantively value-neutral and instrumentally rational machine serving goals set by society. Regulatory decision-making was shunted into the abstruse procedures of courtrooms and bureaucracies. Defenders of the state emphasized that its processes of allocating authority were neutral, impartial, and open to all. The balanced accommodation of all interest groups seeking to exercise influence would yield an equilibrium corresponding to the public interest.15

The intermeshing of state and society through interest groups, agencies, and professionalized parties marginalized the public. The sovereign public opinion that Progressives had hoped would rationalize government gave way to the rationality supposedly inherent in processes of public law, public-private negotiation, and regulated markets. The state was endowed with a diffuse legitimacy in exchange for a growing economy, broad distribution, and ongoing household capacity to consume.16 The Keynesian welfare settlement pacified the working class, protecting the market economy from more radical political pressures. Newly available, mass-produced commodities encouraged leveled-down notions of citizenship as welfare clientelism and privatistic consumption. As the state expanded and routinized, the initial politicization of private property relations through public intervention developed into depoliticized economic management by lawyers and social scientists organized by administrative and judicial processes.

#### Neoliberalism commoditizes life, ensures inequality, and causes eco-crises

Harvey 5 (David, FBA is the Distinguished Professor of Anthropology and Geography @ the Graduate Center of the City Univ. of New York, A Brief History of Neoliberalism, pgs 165-171//shree)

To presume that markets and market signals can best determine all allocative decisions is to presume that everything can in principle be treated as a commodity. Commodification presumes the existence of property rights over processes, things, and social relations, that a price can be put on them, and that they can be traded subject to legal contract. The market is presumed to work as an appropriate guide––an ethic––for all human action. In practice, of course, every society sets some bounds on where commodification begins and ends. Where the boundaries lie is a matter of contention. Certain drugs are deemed illegal. The buying and selling of sexual favours is outlawed in most US states, though elsewhere it may be legalized, decriminalized, and even state-regulated as an industry. Pornography is broadly protected as a form of free speech under US law although here, too, there are certain forms (mainly concerning children) that are considered beyond the pale. In the US, conscience and honour are supposedly not for sale, and there exists a curious penchant to pursue ‘corruption’ as if it is easily distinguishable from the normal practices of influence-peddling and making money in the marketplace. The commodification of sexuality, culture, history, heritage; of nature as spectacle or as rest cure; the extraction of monopoly rents from originality, authenticity, and uniqueness (of works or art, for example)––these all amount to putting a price on things that were never actually produced as commodities.17 There is often disagreement as to the appropriate- ness of commodification (of religious events and symbols, for example) or of who should exercise the property rights and derive the rents (over access to Aztec ruins or marketing of Aboriginal art, for example).¶ Neoliberalization has unquestionably rolled back the bounds of commodification and greatly extended the reach of legal contracts. It typically celebrates (as does much of postmodern theory) ephemerality and the short-term contract––marriage, for example, is understood as a short-term contractual arrangement rather than as a sacred and unbreakable bond. The divide between neoliberals and neoconservatives partially reflects a difference as to where the lines are drawn. The neoconservatives typically blame ‘liberals’, ‘Hollywood’, or even ‘postmodernists’ for what they see as the dissolution and immorality of the social order, rather than the corporate capitalists (like Rupert Murdoch) who actually do most of the damage by foisting all manner of sexually charged if not salacious material upon the world and who continually flaunt their pervasive preference for short-term over long-term commitments in their endless pursuit of profit.¶ But there are far more serious issues here than merely trying to protect some treasured object, some particular ritual or a preferred corner of social life from the monetary calculus and the short-term contract. For at the heart of liberal and neoliberal theory lies the necessity of constructing coherent markets for land, labour, and money, and these, as Karl Polanyi pointed out, ‘are obviously not commodities . . . the commodity description of labour, land, and money is entirely fictitious’. While capitalism cannot function without such fictions, it does untold damage if it fails to acknowledge the complex realities behind them. Polanyi, in one of his more famous passages, puts it this way:¶ To allow the market mechanism to be sole director of the fate of human beings and their natural environment, indeed, even of the amount and use of purchasing power, would result in the demolition of society. For the alleged commodity ‘labour power’ cannot be shoved about, used indiscriminately, or even left unused, without affecting also the human individual who happens to be the bearer of this peculiar commodity. In disposing of man’s labour power the system would, incidentally, dispose of the physical, psychological, and moral entity ‘man’ attached to that tag. Robbed of the protective covering of cultural institutions, human beings would perish from the effects of social exposure; they would die as victims of acute social dislocation through vice, perversion, crime and starvation. Nature would be reduced to its elements, neighborhoods and landscapes defiled, rivers polluted, military safety jeopardized, the power to produce food and raw materials destroyed. Finally, the market administration of purchasing power would periodically liquidate business enterprise, for shortages and surfeits of money would prove as disastrous to business as floods and droughts in primitive society.18¶ The damage wrought through the ‘floods and droughts’ of fictitious capitals within the global credit system, be it in Indonesia, Argentina, Mexico, or even within the US, testifies all too well to Polanyi’s final point. But his theses on labour and land deserve further elaboration.¶ Individuals enter the labour market as persons of character, as individuals embedded in networks of social relations and socialized in various ways, as physical beings identifiable by certain characteristics (such as phenotype and gender), as individuals who have accumulated various skills (sometimes referred to as ‘human cap- ital’) and tastes (sometime referred to as ‘cultural capital’), and as living beings endowed with dreams, desires, ambitions, hopes, doubts, and fears. For capitalists, however, such individuals are a mere factor of production, though not an undifferentiated factor since employers require labour of certain qualities, such as physical strength, skills, flexibility, docility, and the like, appropriate to cer- tain tasks. Workers are hired on contract, and in the neoliberal scheme of things short-term contracts are preferred in order to maximize flexibility. Employers have historically used differentiations within the labour pool to divide and rule. Segmented labour markets then arise and distinctions of race, ethnicity, gen- der, and religion are frequently used, blatantly or covertly, in ways that redound to the employers’ advantage. Conversely, workers may use the social networks in which they are embedded to gain privileged access to certain lines of employment. They typically seek to monopolize skills and, through collective action and the creation of appropriate institutions, seek to regulate the labour market to protect their interests. In this they are merely construct- ing that ‘protective covering of cultural institutions’ of which Polanyi speaks.¶ Neoliberalization seeks to strip away the protective coverings that embedded liberalism allowed and occasionally nurtured. The general attack against labour has been two-pronged. The powers of trade unions and other working-class institutions are curbed or dismantled within a particular state (by violence if necessary). Flexible labour markets are established. State withdrawal from social welfare provision and technologically induced shifts in job structures that render large segments of the labour force redun- dant complete the domination of capital over labour in the market- place. The individualized and relatively powerless worker then confronts a labour market in which only short-term contracts are offered on a customized basis. Security of tenure becomes a thing of the past (Thatcher abolished it in universities, for example). A ‘personal responsibility system’ (how apt Deng’s language was!) is substituted for social protections (pensions, health care, protec- tions against injury) that were formerly an obligation of employers and the state. Individuals buy products in the markets that sell social protections instead. Individual security is therefore a matter of individual choice tied to the affordability of financial products embedded in risky financial markets.¶ The second prong of attack entails transformations in the spa- tial and temporal co-ordinates of the labour market. While too much can be made of the ‘race to the bottom’ to find the cheapest and most docile labour supplies, the geographical mobility of capital permits it to dominate a global labour force whose own geographical mobility is constrained. Captive labour forces abound because immigration is restricted. These barriers can be evaded only by illegal immigration (which creates an easily exploitable labour force) or through short-term contracts that permit, for example, Mexican labourers to work in Californian agribusiness only to be shamelessly shipped back to Mexico when they get sick and even die from the pesticides to which they are exposed.¶ Under neoliberalization, the figure of ‘the disposable worker’ emerges as prototypical upon the world stage.19 Accounts of the appalling conditions of labour and the despotic conditions under which labourers work in the sweatshops of the world abound. In China, the conditions under which migrant young women from rural areas work are nothing short of appalling: ‘unbearably long hours, substandard food, cramped dorms, sadistic managers who beat and sexually abuse them, and pay that arrives months late, or sometimes not at all’.20 In Indonesia, two young women recounted their experiences working for a Singapore-based Levi-Strauss subcontractor as follows:¶ We are regularly insulted, as a matter of course. When the boss gets angry he calls the women dogs, pigs, sluts, all of which we have to endure patiently without reacting. We work officially from seven in the morning until three (salary less than $2 a day), but there is often compulsory overtime, sometimes––especially if there is an urgent order to be delivered––until nine. However tired we are, we are not allowed to go home. We may get an extra 200 rupiah (10 US cents) . . . We go on foot to the factory from where we live. Inside it is very hot. The building has a metal roof, and there is not much space for all the workers. It is very cramped. There are over 200 people working there, mostly women, but there is only one toilet for the whole factory . . . when we come home from work, we have no energy left to do anything but eat and sleep . . .21¶ Similar tales come from the Mexican maquila factories, the Taiwanese- and Korean-operated manufacturing plants in Honduras, South Africa, Malaysia, and Thailand. The health haz- ards, the exposure to a wide range of toxic substances, and death on the job pass by unregulated and unremarked. In Shanghai, the Taiwanese businessman who ran a textile warehouse ‘in which 61 workers, locked in the building, died in a fire’ received a ‘lenient’ two-year suspended sentence because he had ‘showed repentance’ and ‘cooperated in the aftermath of the fire’.22¶ Women, for the most part, and sometimes children, bear the brunt of this sort of degrading, debilitating, and dangerous toil.23 The social consequences of neoliberalization are in fact extreme. Accumulation by dispossession typically undermines whatever powers women may have had within household production/ marketing systems and within traditional social structures and relocates everything in male-dominated commodity and credit markets. The paths of women’s liberation from traditional patri- archal controls in developing countries lie either through degrad- ing factory labour or through trading on sexuality, which varies from respectable work as hostesses and waitresses to the sex trade (one of the most lucrative of all contemporary industries in which a good deal of slavery is involved). The loss of social protec- tions in advanced capitalist countries has had particularly negative effects on lower-class women, and in many of the ex-communist countries of the Soviet bloc the loss of women’s rights through neoliberalization has been nothing short of catastrophic.¶ So how, then, do disposable workers––women in particular–– survive both socially and affectively in a world of flexible labour markets and short-term contracts, chronic job insecurities, lost social protections, and often debilitating labour, amongst the wreckage of collective institutions that once gave them a modicum of dignity and support? For some the increased flexibility in labour markets is a boon, and even when it does not lead to material gains the simple right to change jobs relatively easily and free of the traditional social constraints of patriarchy and family has intangible benefits. For those who successfully negotiate the labour market there are seemingly abundant rewards in the world of a capitalist consumer culture. Unfortunately, that culture, however spectacular, glamorous, and beguiling, perpetually plays with desires without ever conferring satisfactions beyond the limited identity of the shopping mall and the anxieties of status by way of good looks (in the case of women) or of material possessions. ‘I shop therefore I am’ and possessive individualism together con- struct a world of pseudo-satisfactions that is superficially exciting but hollow at its core. But for those who have lost their jobs or who have never managed to move out of the extensive informal economies that now provide a parlous refuge for most of the world’s disposable work- ers, the story is entirely different. With some 2 billion people condemned to live on less than $2 a day, the taunting world of capitalist consumer culture, the huge bonuses earned in financial services, and the self-congratulatory polemics as to the emancipa- tory potential of neoliberalization, privatization, and personal responsibility must seem like a cruel joke. From impoverished rural China to the affluent US, the loss of health-care protections and the increasing imposition of all manner of user fees adds considerably to the financial burdens of the poor.24

#### Vote neg for a historical materialistworld-systems approach

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Today the terms “world economy”, “world market”, and “globalization” are commonplace, appearing in the sound-bites of politicians, media commentators, and unemployed workers alike. But few know that the most important source for these phrases lies with work started by sociologists in the early Seventies. At a time when the mainstream assumption of accepted social, political, and economic science held that the “wealth of nations” reflected mainly on the cultural developments within those nations, a growing group of social scientists recognized that national “development” could be best understood as the complex outcome of local interactions with an aggressively expanding Europe-centered “world-system” (Wallerstein 1974; Frank 1978).1 Not only did these scientists perceive the global nature of economic networks 20 years before they entered popular discourse, but they also saw that many of these networks extend back at least 600 years. Over this time, the peoples of the globe became linked into one integrated unit: the modern world-system. Now, 20 years on, social scientists working in the area are trying to understand the history and evolution of the whole system, as well as how local, national and regional entities have been integrated into it. This current research has required broadening our perspective to include deeper temporal and larger spatial frameworks. For example, some recent research has compared the modern Europe-centered world-system of the last six hundred years with earlier, smaller intersocietal networks that have existed for millennia (Frank and Gills 1993; Chase-Dunn and Hall 1997). Other work uses the knowledge of cycles and trends that has grown out of world-systems research to anticipate likely future events with a precision impossible before the advent of the theory. This is still a new field and much remains to be done, but enough has already been achieved to provide a valuable understanding of the phenomenon of globalization. The discourse about globalization has emerged mainly in the last decade. The term means many different things, and there are many reasons for its emergence as a popular concept. The usage of this term generally implies that a recent change (within the last decade or two) has occurred in technology and in the size of the arena of economic competition. The general idea is that information technology has created a context in which the global market, rather than separate national markets, is the relevant arena for economic competition. It then follows that economic competitiveness needs to be assessed in the global context, rather than in a national or local context. These notions have been used to justify the adoption of new practices by firms and governments all over the world and these developments have altered the political balances among states, firms, unions and other interest groups. The first task is to put this development into historical context. The world-systems perspective has shown that intersocietal geopolitics and geoeconomics has been the relevant arena of competition for national-states, firms and classes for hundreds of years. The degree of international connectedness of economic and political/military networks was already important in the fourteenth and fifteenth centuries. The first “transnational corpora-tions” (TNCs) were the great chartered companies of the seventeenth century. They organized both production and exchange on an intercontinental scale. The rise and fall of hegemonic core powers, which continues today with the relative decline of the United States hegemony, was already in full operation in the seventeenth century rise and fall of Dutch hegemony (see Arrighi 1994; Modelski and Thompson 1996; Taylor 1996). The capitalist world-economy has experienced cyclical processes and secular trends for hundreds of years (Chase-Dunn 1998:Chapter 2). The cyclical processes include the rise and fall of hegemons, the Kondratieff wave (a forty to sixty year business cycle)2 , a cycle of warfare among core states (Goldstein 1988), and cycles of colonization and decolonization (Bergesen and Schoenberg 1980). The world-system has also experienced several secular trends including a long-term proletarianization of the world work force, growing concentration of capital into larger and larger firms, increasing internationalization of capital investment and of trade, and accelerating internationalization of political structures. In this perspective, globalization is a long-term upward trend of political and economic change that is affected by cyclical processes. The most recent technological changes, and the expansions of international trade and investment, are part of these long-run changes. One question is exactly how the most recent changes compare with the long-run trends? And what are the important continuities as well as the qualitative differences that accompany these changes? These are the questions that I propose to explore. types of globalization There are at least five different dimensions of globalization that need to be distinguished. There are also several misunderstandings and misinterpretations that need to be clarified. Let us evaluate five different meanings of globalization: (1) Common ecological constraints This aspect of globalization involves global threats due to our fragile ecosystem and the globalization of ecological risks. Anthropogenic causes of ecological degradation have long operated, and these in turn have affected human social evolution (Chase-Dunn and Hall 1997). But ecological degradation has only recently begun to operate on a global scale. This fact creates a set of systemic constraints that require global collective action. (2) Cultural globalization This aspect of globalization relates to the diffusion of two sets of cultural phenomena: • the proliferation of individualized values, originally of Western origin, to ever larger parts of the world population. These values are expressed in social constitutions that recognize individual rights and identities and transnational and international efforts to protect “human rights.” • the adoption of originally Western institutional practices. Bureaucratic organization and rationality, belief in a law-like natural universe, the values of economic efficiency and political democracy have been spreading throughout the world since they were propagated in the European Enlightenment (Meyer 1996; Markoff 1996). Whereas some of the discussions of the world polity assume that cultural components have been a central aspect of the modern world-system from the start (e.g. Meyer 1989; Mann 1986), I emphasize the comparatively non-normative nature of the modern world-system (Chase-Dunn 1998: Chapter 5). But I acknowledge the growing salience of cultural consensus in the last 100 years. Whereas the modern world-system has always been, and is still, multicultural, the growing influence and acceptance of Western values of rationality, individualism, equality, and efficiency is an important trend of the twentieth century. (3) Globalization of communication Another meaning of globalization is connected with the new era of information technology. Anthony Giddens(1996) insists that social space comes to acquire new qualities with generalized electronic communications, albeit only in the networked parts of the world. In terms of accessibility, cost and velocity, the hitherto more local political and geographic parameters that structured social relationships are greatly expanded. One may well argue that time-space compression (Harvey 1989) by new information technologies is simply an extension and acceleration of the very long-term trend toward technological development over the last ten millenia (Chase-Dunn 1994). Yet, the rapid decrease in the cost of communications may have qualitatively altered the relationship between states and consciousness and this may be an important basis for the formation of a much stronger global civil society. Global communication facilities have the power to move things visible and invisible from one part of the globe to another whether any nation-state likes it or not. This applies not only to economic exchange, but also to ideas, and these new networks of communication can create new political groups and alignments. How, and to what extent, will this undermine the power of states to structure social relationships? (4) Economic globalization Economic globalization means globe-spanning economic relationships. The interrelationships of markets, finance, goods and services, and the networks created by transnational corporations are the most important manifestations of this. Though the capitalist world-system has been international in essence for centuries, the extent and degree of trade and investment globalization has increased greatly in recent decades. Economic globalization has been accelerated by what information technology has done to the movement of money. It is commonly claimed that the market’s ability to shift money from one part of the globe to another by the push of a button has changed the rules of policy-making, putting economic decisions much more at the mercy of market forces than before. The world-system has undergone major waves of economic globalization before, especially in the last decades of the the nineteenth century. One important question is whether or not the most recent wave has actually integrated the world to a qualitatively greater extent that it was integrated during the former wave. All the breathy discussions of global capitalism and global society assume that this is the case, but careful comparative research indicates that this is not so (see below and Chase-Dunn, Kawano and Brewer 2000). (5) Political globalization Political globalization consists of the institutionalization of international political structures. The Europe-centered world-system has been primarily constituted as an interstate system—a system of conflicting and allying states and empires. Earlier world-systems, in which accumulation was mainly accomplished by means of institutionalized coercive power, experienced an oscillation between multicentric interstate systems and core-wide world empires in which a single “universal” state conquered all or most of the core states in a region. The Europe-centered system has also experienced a cyclical alternation between political centralization and decentralization, but this has taken the form of the rise and fall of hegemonic core states that do not conquer the other core states. Hence the modern world-system has remained multicentric in the core, and this is due mainly to the shift toward a form of accumulation based more on the production and profitable sale of commodities—capitalism. The hegemons have been the most thoroughly capitalist states and they have preferred to follow a strategy of controlling trade and access to raw material imports from the periphery rather than conquering other core states to extract tribute or taxes. Power competition in an interstate system does not require much in the way of cross-state cultural consensus to operate systemically. But since the early nineteenth century the European interstate system has been developing both an increasingly consensual international normative order and a set of international political structures that regulate all sorts of interaction. This phenomenon has been termed “global governance” by Craig Murphy (1994) and others. It refers to the growth of both specialized and general international organizations. The general organizations that have emerged are the Concert of Europe, the League of Nations and the United Nations. The sequence of these “proto-world-states” constitutes a process of institution-building, but unlike earlier “universal states” this one is slowly emerging by means of condominium among core states rather than conquest. This is the trend of political globalization. It is yet a weak, but persistent, concentration of sovereignty in international institutions. If it continues it will eventuate in a single global state that could effectively outlaw warfare and enforce its illegality. The important empirical question, analogous to the discussion of economic globalization above, is the relative balance of power between international and global political organizations vis a vis national states. We assume this to be an upward trend, but like economic globalization it probably is also a cycle. Measuring Economic Globalization The brief discussion above of economic globalization implies that it is a long-run upward trend. The idea is that international economic competition as well as geopolitical competition were already important in the fourteenth century and that they became increasingly important as more and more international trade and international investment occurred. In its simplest form this would posit a linear upward trend of economic globalization. An extreme alternative hypothesis about economic globalization would posit a completely unintegrated world composed of autarchic national economies until some point (perhaps in the last few decades) at which a completely global market for commodities and capital suddenly emerged. Let us examine data that can tell us more about the temporal emergence of economic globalization. There are potentially a large number of different indicators of economic globalization and they may or may not exhibit similar patterns with respect to change over time. Trade globalization can be operationalized as the proportion of all world production that crosses international boundaries. Investment globalization would be the proportion of all invested capital in the world that is owned by non-nationals (i.e. “foreigners”). And we could also investigate the degree of economic integration of countries by determining the extent to which national economic growth rates are correlated across countries. 3 It would be ideal to have these measures over several centuries, but comparable fi gures are not available before the nineteenth century, and indeed even these are sparse and probably unrepresentative of the whole system until well into the twentieth century. Nevertheless we can learn some important things by examining those comparable data that are available. Figure 1 shows trade and investment globalization. Trade globalization is the ratio of estimated total world exports (the sum of the value of exports of all countries) divided by an estimate of total world product (the sum of all the national GDPs). Investment globalization is the total book value of all foreign direct investment divided by the total world product. The trade globalization figures show the hypothesized upward trend as well as a downturn that occurred between 1929 and 1950. Note that the time scale in Figure 1 is distorted by the paucity of data before 1950. It is possible that important changes in trade globalization are not visible in this series because of the wide temporal gaps in the data. Indeed a more recent study has shown that this is the case. There was a shorter and less well-defined wave of trade globalization from 1900 to 1929 (Chase-Dunn, Kawano and Brewer 2000). Figure 1 also shows that the trade indicator differs in some ways from the investment indicator. Investment globalization was higher (or as high) in 1913 as it was in 1991, while trade globalization was considerably lower in 1913 than it was in 1992. We have fewer time points for the investment data, so we cannot tell for sure about the shape of the changes that took place, but these two series imply that different indicators of economic globalization may show somewhat different trajectories. More research needs to be done on investment globalization to determine its exact trajectory and for comparison with trade globalization and other world-system cycles and trends. A third indicator of economic globalization is the correlation of national GDP growth rates (Grimes 1993). This shows the extent to which periods of national economic growth and stagnation have been synchronized across countries. In a fully integrated global economy it would be expected that growth and stagnation periods would be synchronized across countries and so there would be a high correlation of national growth rates. Grimes shows that, contrary to the hypothesis of a secular upward trend toward increasing global integration, the correlation among national growth rates fluctuates cyclically over the past two centuries. In a data series from 1860 to 1988 Grimes found two periods in which national economic growth decline sequences are highly correlated across countries: - 1913-1927; and after 1970. Before and in between these peaks are periods of very low synchronization. Further research needs to be done to determine the temporal patterns of different sorts of economic globalization. At this point we can say that the step-function version of a sudden recent leap to globalization can be rejected. The evidence we have indicates that there are both long-term secular trends and huge cyclical oscillations. Trade globalization shows a long-term trend with a big dip during the depression of the 1930s. The investment globalization indicates a cycle with at least two peaks, one before World War I and one after 1980. Grimes’s indicator of synchronous economic growth indicates a cyclical fluctuation with one peak in the 1920s and another since 1970. These results, especially those that imply cycles, indicate that change occurs relatively quickly and that the most recent period of globalization shares important features with earlier periods of intense international economic interaction. The question of the similarities and differences between the most recent wave and earlier waves of globalization is clearly an important one. systemic cycles of accumulation Giovanni Arrighi (1994) shows how hegemony in the modern world system has evolved in a series of “systemic cycles of accumulation” (SCAs) in which finance capital has employed different forms of organization and different relationships with organized state power. These qualitative organizational changes have accompanied the secular increase in the power of money and markets as regulatory forces in the modern world-system. The SCAs have been occurring in the Europe-centered world-system since at least the fourteenth century. Arrighi’s model shows both the similarities and the differences in the relationships that obtain between financial capital and states within the different systemic cycles of accumulation. The British SCA and the American SCA had both similarities and important differences. The main differences that Arrighi emphasizes are the “internalization of transaction costs” (represented by the vertical integration of TNCs) and the extent to which the U.S. tried to create “organized capitalism” on a global scale. The British SCA had fewer global firms and pushed hard for international free trade. The U.S. SCA is characterized by a much heavier focus on global firms and by a more structured approach to “global governance” possibly intended to produce economic growth in other core regions, especially those that are geopolitically strategic. Arrighi argues that President Roosevelt used the power of the hegemonic state to try to create a balanced world of capitalist growth. This sometimes meant going against the preferences of finance capital and U.S. corporations. For example, the Japanese miracle was made possible because the U.S. government prevented U.S. corporations from turning Japan (and Korea) into just one more dependent and peripheralized country. This policy of enlightened global Keynesianism was continued in a somewhat constrained form under later presidents, albeit in the guise of domestic “military Keynesianism” justified by the Soviet threat. In this interpretation the big companies and the finance capitalists returned to power with the decline in competitiveness of the U.S. economy. The rise of the Eurodollar market forced Nixon to abandon the Bretton Woods financial structure, and this was followed by ReaganismThatcherism, IMF structural adjustment, streamlining, deregulation and the delegitimation of anything that constrained the desires of global capital investment. The idea that we are all subject to the forces of a global market-place, and that any constraint on the freedom to invest will result in a deficit of “competitiveness,” is a powerful justification for destroying the institutions of the “Second Wave” (e.g. labor unions, welfare, agricultural subsidies, etc.).4 Under conditions of increased economic globalization the ability of national states to protect their citizens from world market forces decreases. This results increasing inequalities within countries, and increasing levels of dis-satisfaction compared to the relative harmony of national integration achieved under the Keynesian regimes. It is also produces political reactions, especially national-populist movements.5 Indeed, Philip McMichael (1996) attributes the anti-government movements now occurring in the U.S. West, including the bombing of the Federal Building in Oklahoma City, to the frustrations caused by the deregulation of U.S. agriculture. It would also be useful to investigate the temporal patterns of the other types of globalization: cultural,6 political, technological and ecological. Of interest too are the relationships between these and economic globalization. Much empirical work needs to be done to operationalize these concepts and to assemble the relevant information. Here, for now, I will hypothesize that all these types exhibit both long-run secular and cyclical features. I will also surmise that cultural and political globalization are lagged behind the secular upward trend of economic globalization. the politics of globalization This last hypothesis bears on the question of adjustments of political and social institutions to increases in economic and technological globalization. I would submit that the current period of economic globalization has occurred in part due to technological changes that are linked to Kondratieff waves, and in part because of the profit squeezes and declining hegemony of the U.S. economy in the larger world market. 7 The financial aspects of the current period of economic globalization began when President Nixon canceled the Bretton Woods agreement in response to pressures on the value of the U.S. dollar coming from the rapidly growing Eurodollar market (Harvey 1995). This occurred in 1967, and this date is used by many to mark the beginning of a K-wave downturn. The saturation of the world market demand for the products of the post-World War II upswing, the constraints on capital accumulation posed by business unionism and the political entitlements of the welfare states in core countries caused a profit squeeze that motivated large firms and investors and their political helpers to try to break out of these constraints. The possibilities for global investment opened up by new communications and information technology created new maneuverability for capital. The demise of the Soviet Union8 added legitimacy to the revitalized ideology of the free market and this ideology swept the Earth. Not only Reagan and Thatcher, but Eurocommunists and labor governments in both the core and the periphery, adopted the ideology of the “lean state,” deregulation, privatization and the notion that everything must be evaluated in terms of global efficiency and competitiveness. Cultural globalization has been a very long-term upward trend since the emergence of the world religions in which any person, regardless of ethnicity or kinship, could become a member of the moral community by confessing faith in the “universal” god. But moral and political cosmography has usually encompassed a smaller realm than the real dimensions of the objective trade and political/military networks in which people have been involved. What has occurred at the end of the twentieth century is a near convergence between subjective cosmography and objective networks. The main cause of this is probably the practical limitation of human habitation to the planet Earth. But the long-run declining costs of transportation and communications are also an important element. Whatever the causes, the emergent reality is one in which consciousness embraces (or goes beyond) the real systemic networks of interaction. This geographical feature of the global system is one of its uniquenesses, and it makes possible for the future a level of normative order that has not existed since human societies were very small and egalitarian (Chase-Dunn and Hall 1997a). The ideology of globalization has undercut the support and the rationale behind all sorts of so-called Second Wave institutions—labor unions, socialist parties, welfare programs, and communist states. While these institutions have not been destroyed everywhere, the politicians of the right (e.g. Newt Gingrich in the U.S.) have explicitly argued for their elimination. At the same time, the very technologies that made capitalist economic globalization possible also have the potential to allow those who do not benefit from the free reign of capital to organize new forms of resistance, or to revitalize old forms. It is now widely agreed by many, even in the financial community, that the honeymoon of neo-liberalism will eventually end and that the rough edges of global capitalism will need to be buffed. Patrick Buchanan, a conservative candidate for the U.S. presidency in 1996, tried to capitalize on popular resentment of corporate downsizing. The Wall Street Journal has reported that stock analysts worry about the “lean and mean” philosophy becoming a fad that has the potential to delegitimate the business system and to create political backlashes. This was expressed in the context of a discussion of the announcement of huge bonuses for AT&T executives following another round of downsizing. I already mentioned the difficulties that states are having in controlling communications on the Internet. I do not believe the warnings of those who predict a massive disruption of civilization by hordes of sociopaths waging “cyberwar”9 But I do think that the new communications technologies provide new opportunities for the less powerful to organize themselves to respond should global capitalism run them over or leave them out. The important question is what are the most useful organizational forms for resistance? What we already see are all sorts of nutty localisms, nationalisms and a proliferation of identity politics. The militias of the U.S. West are ordering large amounts of fertilizer with which to resist the coming of the “Blue Helmets”—a fantasized world state that is going to take away their handguns and assualt rifles.10 Localisms and specialized identities are the postmodern political forms that are supposedly produced by information technology, flexible specialization, and global capitalism (Harvey 1989). I think that at least some of this trend is a result of desperation and the demise of plausible alternatives in the face of the ideological hegemony of neoliberalism and the much-touted triumph of efficiency over justice. Be that as it may, a historical perspective on the latest phase of globalization allows us to see the long-run patterns of interaction between capitalist expansion and the movements of opposition that have tried to protect people from the negative aspects of market forces and exploitation. And this perspective has implications for going beyond the impasse of the present to build a more cooperative and humane global system (Boswell and Chase-Dunn 1999). the spiral of capitalism and socialism The interaction between expansive commodification and resistance movements can be denoted as “the spiral of capitalism and socialism.” The world-systems perspective provides a view of the long-term interaction between the expansion and deepening of capitalism and the efforts of people to protect themselves from exploitation and domination. The historical development of the communist states is explained as part of a long-run spiraling interaction between expanding capitalism and socialist counter-responses. The history and developmental trajectory of the communist states can be explained as socialist movements in the semiperiphery that attempted to transform the basic logic of capitalism, but which ended up using socialist ideology to mobilize industrialization for the purpose of catching up with core capitalism. The spiraling interaction between capitalist development and socialist movements can be seen in the history of labor movements, socialist parties and communist states over the last 200 years. This long-run comparative perspective enables one to see recent events in China, Russia and Eastern Europe in a framework that has implications for the future of social democracy. The metaphor of the spiral means this: both capitalism and socialism affect one another’s growth and organizational forms. Capitalism spurs socialist responses by exploiting and dominating peoples, and socialism spurs capitalism to expand its scale of production and market integration and to revolutionize technology. Defined broadly, socialist movements are those political and organizational means by which people try to protect themselves from market forces, exploitation and domination, and to build more cooperative institutions. The sequence of industrial revolutions, by which capitalism has restructured production and taken control of labor, have stimulated a series of political organizations and institutions created by workers to protect their livelihoods. This happened differently under different political and economic conditions in different parts of the world-system. Skilled workers created guilds and craft unions. Less skilled workers created industrial unions. Sometimes these coalesced into labor parties that played important roles in supporting the development of political democracies, mass education and welfare states (Rueschemeyer, Stephens and Stephens 1992). In other regions workers were less politically successful, but managed at least to protect access to rural areas or subsistence plots for a fall-back or hedge against the insecurities of employment in capitalist enterprises. To some extent the burgeoning contemporary “informal sector” in both core and peripheral societies provides such a fall-back. The mixed success of workers’ organizations also had an impact on the further development of capitalism. In some areas workers or communities were successful at raising the wage bill or protecting the environment in ways that raised the costs of production for capital. When this happened capitalists either displaced workers by automating them out of jobs or capital migrated to where fewer constraints allowed cheaper production. The process of capital flight is not a new feature of the world-system. It has been an important force behind the uneven development of capitalism and the spreading scale of market integration for centuries. Labor unions and socialist parties were able to obtain some power in certain states, but capitalism became yet more international. Firm size increased. International markets became more and more important to successful capitalist competition. Fordism, the employment of large numbers of easily-organizable workers in centralized production locations, has been supplanted by “flexible accumulation” (small firms producing small customized products) and global sourcing (the use of substitutable components from broadly dispersed competing producers), are all production strategies that make traditional labor organizing approaches much less viable. communist states in the world-system Socialists were able to gain state power in certain semiperipheral states and use this power to create political mechanisms of protection against competition with core capital. This was not a wholly new phenomenon. As discussed below, capitalist semiperipheral states had done and were doing similar things. But, the communist states claimed a fundamentally oppositional ideology in which socialism was allegedly a superior system that would eventually replace capitalism. Ideological opposition is a phenomenon which the capitalist world-economy has seen before. The geopolitical and economic battles of the Thirty Years War were fought in the name of Protestantism against Catholicism. The content of the ideology may make some difference for the internal organization of states and parties, but every contender must be able to legitimate itself in the eyes and hearts of its cadre. The claim to represent a qualitatively different and superior socio-economic system is not evidence that the communist states were indeed structurally autonomous from world capitalism. The communist states severely restricted the access of core capitalist firms to their internal markets and raw materials, and this constraint on the mobility of capital was an important force behind the post-World War II upsurge in the spatial scale of market integration and a new revolution of technology. In certain areas capitalism was driven to further revolutionize technology or to improve living conditions for workers and peasants because of the demonstration effect of propinquity to a communist state. U.S. support for state-led industrialization of Japan and Korea (in contrast to U.S. policy in Latin America) is only understandable as a geopolitical response to the Chinese revolution. The existence of “two superpowers”—one capitalist and one communist—in the period since World War II provided a fertile context for the success of international liberalism within the “capitalist” bloc. This was the political/military basis of the rapid growth of transnational corporations and the latest revolutionary “time-space compression” (Harvey 1989). This technological revolution has once again restructured the international division of labor and created a new regime of labor regulation called “flexible accumulation.” The process by which the communist states have become reintegrated into the capitalist world-system has been long, as described below. But, the final phase of reintegration was provoked by the inability to be competitive with the new form of capitalist regulation. Thus, capitalism spurs socialism, which spurs capitalism, which spurs socialism again in a wheel that turns and turns while getting larger. The economic reincorporation of the communist states into the capitalist world-economy did not occur recently and suddenly. It began with the mobilization toward autarchic industrialization using socialist ideology, an effort that was quite successful in terms of standard measures of economic development. Most of the communist states were increasing their percentage of world product and energy consumption up until the 1980s. The economic reincorporation of the communist states moved to a new stage of integration with the world market and foreign firms in the 1970s. Andre Gunder Frank (1980:chapter 4) documented a trend toward reintegration in which the communist states increased their exports for sale on the world market, increased imports from the avowedly capitalist countries, and made deals with transnational firms for investments within their borders. The economic crisis in Eastern Europe and the Soviet Union was not much worse than the economic crisis in the rest of the world during the global economic downturn that began in the late 1960s (see Boswell and Peters 1990, Table 1). Data presented by World Bank analysts indicates that GDP growth rates were positive in most of the “historically planned economies” in Europe until 1989 or 1990 (Marer et al, 1991: Table 7a). Put simply, the big transformations that occurred in the Soviet Union and China after 1989 were part of a process that had long been underway since the 1970s. The big socio-political changes were a matter of the superstructure catching up with the economic base. The democratization of these societies is, of course, a welcome trend, but democratic political forms do not automatically lead to a society without exploitation or domination. The outcomes of current political struggles are rather uncertain in most of the ex-communist countries. New types of authoritarian regimes seem at least as likely as real democratization. As trends in the last two decades have shown, austerity regimes, deregulation and marketization within nearly all of the communist states occurred during the same period as similar phenomena in non-communist states. The synchronicity and broad similarities between Reagan/Thatcher deregulation and attacks on the welfare state, austerity socialism in most of the rest of the world, and increasing pressures for marketization in the Soviet Union and China are all related to the B-phase downturn of the Kondratieff wave, as are the current moves toward austerity and privatization in many semiperipheral and peripheral states. The trend toward privatization, deregulation and market-based solutions among parties of the Left in almost every country is thoroughly documented by Lipset (1991). Nearly all socialists with access to political power have abandoned the idea of doing more than buffing off the rough edges of capitalism. The way in which the pressures of a stagnating world economy impact upon national policies certainly varies from country to country, but the ability of any single national society to construct collective rationality is limited by its interaction within the larger system. The most recent expansion of capitalist integration, termed “globalization of the economy,” has made autarchic national economic planning seem anachronistic. Yet, a political reaction against economic globalization is now under way in the form of revived ex-communist parties, economic nationalism (e.g., Pat Buchanan, the Brazilian military) and a coalition of oppositional forces who are critiquing the ideological hegemony of neo-liberalism (e.g., Ralph Nader, environmentalists, populists of the right, etc.). Political Implications of the World-System Perspective The age of U.S. hegemonic decline and the rise of post-modernist philosophy have cast the liberal ideology of the European Enlightenment (science, progress, rationality, liberty, democracy and equality) into the dustbin of totalizing universalisms. It is alleged that these values have been the basis of imperialism, domination and exploitation and, thus, they should be cast out in favor of each group asserting its own set of values. Note that self-determination and a considerable dose of multiculturalism (especially regarding religion) were already central elements in Enlightenment liberalism. The structuralist and historical materialist world-systems approach poses this problem of values in a different way. The problem with the capitalist world-system has not been with its values. The philosophy of liberalism is fine. It has quite often been an embarrassment to the pragmatics of imperial power and has frequently provided justifications for resistance to domination and exploitation. The philosophy of the enlightenment has never been a major cause of exploitation and domination. Rather, it was the military and economic power generated by capitalism that made European hegemony possible.

## Case

#### Their analytic is too abstracted and conflates a metaphysical constant with discrete events of oppression

Pappas 17 – PhD, Associate Professor of Philosophy at Texas A& M University (Gregory, “The Limitations and Dangers of Decolonial Philosophies: Lessons from Zapatista Luis Villoro,” *Radical Philosophy Review*, DOI: 10.5840/radphilrev201732768) --- ability edited

For decolonialists the sickness that afflicts Latin America is the global hegemony—economic, military, political, and cultural—of the West, first via Europe and then the United States, broadcast under the philosophy of the Enlightenment with Europe carrying the mission. As Vallega explains, “Latin America suffered and continues to suffer under western hegemonic modernity and its system of power and knowledge.”19 Villoro believed that at the turn of the twentieth century one of the modern ideas we inherited that must be questioned is “global explanations” because “general ideologies tend to slip into totalitarianism in our thinking.”20 I think Villoro’s reservations are warranted and can be extended to decolonial thought. Granted, a theory of grand historical evil and systematic sickness in the Americas can have great explanatory power and provide theoretical comfort,21 but where are we standing when we start with such large historical metanarratives? How is it this not a God’s-eye view of history? Is there a danger of slipping back into a form of universalism, which they have explicitly avoided? Isn’t there a danger that when a theory explains so much it becomes nonfalsifiable and therefore nonempirical? In any case, the quest for a comprehensive explanation and a grand historical narrative is also in danger of not capturing the historical and concrete particularity (pluralism, complexity, uniqueness) of actual injustices. When we start at the broad level of globality and history as decolonialists often do, there is a risk of oversimplifying and encouraging blindness [ignorance] about concrete injustices. Consulting recent rigorous research done by historians and social anthropologist about Latin America (more on this later) confirms what many know from simply living there: most injustices in different parts of the Americas are so complex that any simple explanation merits the suspicion of being wishful thinking. To be fair, compared to Marxism the decolonial turn added complexity and made a significant shift. Marxism as a tool was not sensitive enough to the realities on the ground in Latin America. It was a universal model that did not adequately address its particular problems. However, decolonialists do not seem to have abandoned or questioned a similar methodological starting point. As a result, decolonial theories may sometimes be presented with the same pretension of offering a universal diagnosis of the complex and tragic problems of Latin America. Perhaps a more pluralistic and context-sensitive approach could avoid some of the dangers I have presented. Here is where the contrast with Villoro is useful. To be sure, Villoro was critical of the same things as the decolonialists: the Eurocentric narrative, modernity, liberalism, and so on. However, when he takes a reflective historical perspective about these large historical and lumpy categories there is a difference in how he does it. He anchors his account in his local present situation, is very specific about what particular aspects of modernity or liberalism are problematic, and does not have one preferred category of analysis such as coloniality. For most decolonial theorists, however, the legacy of colonialism is central (understood broadly as coloniality), and the situation of the oppressed is to be analyzed in relation to a global narrative in which Europe is at its center or in relation to modernity or a global capitalist system. The decolonial project is centered on detecting plural manifestations of the single evolving domination (a social pathology) that started in 1492. Liberation is understood as decolonization via undoing “the coloniality of power” and affirming what has been “conceal[ed] by the Western modern epistemic hegemony.”22 In contrast, at the center of Villoro’s approach is liberation from domination, and the causes of domination are plural and contextual and therefore too complex to be articulated or framed by a global theory of domination. For Villoro liberation is a local event; one of its tools is to sometimes take a global perspective, and the complexity of the problems on the ground may not be fully captured by even our best academic global historical narratives and categories. He inquired into the history of a systematic injustice in order to facilitate inquiry into the present unique, context-bound injustice. If injustice is an illness then Villoro’s approach takes as its main focus diagnosing and treating the particular present illness, i.e., the particular injustice in a corner of Mexico, and not a global “social pathology” or some single transhistorical source of injustice. As concepts and categories, global hierarchies, white supremacy, and coloniality can be great tools that can have planetary significance. One could even argue that they pick out much-larger areas of people’s lives and injustices than the categories of class and gender. However, in spite of their reach and explanatory theoretical value they are nothing more than tools to make reference to and ameliorate particular injustices experienced (suffered) in the midst of a particular and unique relationship in a situation. Why is this important? In present situations (events) of injustice in the Americas there are not only intersecting histories of white supremacy, capitalist exploitation, and patriarchy; there are also unique events, multiple countries with different complex histories and present circumstances, as well as a variety of responsible agents—local and international governments, corporations, particular individuals and communities. Regardless of how much a theory of global domination that centers on coloniality can actually explain, it is reasonable to worry about what it leaves out and question the extent to which it really helps those who are victims of injustice. A wider net may bring more fish from the ocean, but I am not sure this applies to injustices. Such theories may lead to analysis or diagnosis that while true at some level, may actually have very little to offer in terms of more specific diagnoses and solutions that can be of any help to someone suffering an injustice. However, for Mignolo coloniality is “the underlying logic of the foundation and unfolding of Western civilization from the Renaissance to today”23 Coloniality helps explain how race and gender became the basis of classification in the Americas, but it remains an open question how these categories actually operate in particular countries or even in particular unjust events. We can say all we want that the oppressed live in power structures located in global hierarchies and a world-system, but that does not fully capture where they are. However useful and true that account may be about someone’s particular circumstances, it is still overabstracted. Knowing how people have been classified according to a colonial matrix of power is important, but only insofar as it may help us inquire about the present actual causes of an injustice. Moreover, it is not obvious how the use of a single name and the prism of a single cause helps in trying to ameliorate the particular and context-specific evils from which particular countries and people in Latin America suffer. One could reply that my worries are misplaced. Calling decolonization the cure may suggest that coloniality is some sort of single homogeneous cause, but the decolonialists have distinguished between different types of coloniality and have included in their diagnosis a plurality of causes such as exploitation of resources, political manipulation, and assimilation of people from other cultures. If this is the case then why not address these more particular evils, unless one is really committed to some unitary account in which all of these evils can be reduced to a singular cause?

#### That reifies a totalizing understanding of settlerism that doom aff solvency and perpetuates the violence of labor exploitation

Busbridge, 18—Research Fellow at the Centre for Dialogue, La Trobe University (Rachel, “Israel-Palestine and the Settler Colonial ‘Turn’: From Interpretation to Decolonization,” Theory, Culture & Society Vol 35, Issue 1, 2018, dml)

The prescription for decolonisation—that is, a normative project committed to the liberation of the colonised and the overturning of colonial relationships of power (Kohn & McBride, 2011: 3)—is indeed one of the most counterhegemonic implications of the settler colonial paradigm as applied to IsraelPalestine, potentially shifting it from a diagnostic frame to a prognostic one which offers a ‘proposed solution to the problem, or at least a plan of attack’ (Benford & Snow, 2000: 616). What, however, does the settler colonial paradigm offer by way of envisioning decolonisation? As Veracini (2007) notes, while settler colonial studies scholars have sought to address the lack of attention paid to the experiences of Indigenous peoples in conventional historiographical accounts of decolonisation (which have mostly focused on settler independence and the loosening of ties to the ‘motherland’), there is nevertheless a ‘narrative deficit’ when it comes to imagining settler decolonisation. While Veracini (2007) relates this deficit to a matter of conceptualisation, it is apparent that the structural perspective of the paradigm in many ways closes down possibilities of imagining the type of social and political transformation to which the notion of decolonisation aspires. In this regard, there is a worrying tendency (if not tautological discrepancy) in settler colonial studies, where the only solution to settler colonialism is decolonisation—which a faithful adherence to the paradigm renders largely unachievable, if not impossible. To understand why this is the case, it is necessary to return to Wolfe’s (2013a: 257) account of settler colonialism as guided by a ‘zero-sum logic whereby settler societies, for all their internal complexities, uniformly require the elimination of Native alternatives’. The structuralism of this account has immense power as a means of mapping forms of injustice and indignity as well as strategies of resistance and refusal, and Wolfe is careful to show how transmutations of the logic of elimination are complex, variable, discontinuous and uneven. Yet, in seeking to elucidate the logic of elimination as the overarching historical force guiding settler-native relations there is an operational weakness in the theory, whereby such a logic is simply there, omnipresent and manifest even when (and perhaps especially when) it appears not to be; the settler colonial studies scholar need only read it into a situation or context. It thus hurtles from the past to the present into the future, never to be fully extinguished until the native is, or until history itself ends. There is thus a powerful ontological (if not metaphysical) dimension to Wolfe’s account, where there is such thing as a ‘settler will’ that inherently desires the elimination of the native and the distinction between the settler and native can only ever be categorical, founded as it is on the ‘primal binarism of the frontier’ (2013a: 258). It is here that the differences between earlier settler colonial scholarship on Israel-Palestine and the recent settler colonial turn come into clearest view. While Jamal Hilal’s (1976) Marxist account of the conflict, for instance, engaged Palestinians and Jewish Israelis in terms of their relations to the means of production, Wolfe’s account brings its own ontology: the bourgeoisie/proletariat distinction becomes that of settler/native, and the class struggle the struggle between settler, who seeks to destroy and replace the native, and native, who can only ever push back. Indeed, if the settler colonial paradigm views history in similar teleological terms to the Marxist framework, it does not offer the same hopeful vision of a liberated future. After all, settler colonialism has only one story to tell—‘either total victory or total failure’ (Veracini, 2007). Veracini’s attempt to disaggregate different forms of settler decolonisation is revealing of the difficulties that come along with this zero-sum perspective. It is significant to note that beyond settler evacuation (which may decolonise territory, he cautions, but not necessarily relationships) the picture he paints is a relatively bleak one. For Veracini (2011: 5), claims for decolonisation from Indigenous peoples in settler societies can take two broad forms: an ‘anticolonial rhetoric expressing a demand for indigenous sovereign independence and self-determination… and an “ultra”-colonial one that seeks a reconstituted partnership with the [settler state] and advocates a return to a relatively more respectful middle ground and “treaty” conditions’. While both, he suggests, are tempting strategies in the struggle for change, though ‘ultimately ineffective against settler colonial structures of domination’ (2011: 5), it is the latter strategy that invites Veracini’s most scathing assessment. As he writes, under settler colonial conditions the independent polity is the settler polity and sanctioning the equal rights of indigenous peoples has historically been used as a powerful weapon in the denial of indigenous entitlement and in the enactment of various forms of coercive assimilation. This decolonisation actually enhances the subjection of indigenous peoples… it is at best irrelevant and at worst detrimental to indigenous peoples in settler societies (2011: 6-7). The ‘primal binarism of the frontier’ plays a particularly ambivalent role in Veracini’s (2011: 6) formulation, where the categorical distinction between settler and native obstructs the ‘possibility of a genuinely decolonised relationship’ (by virtue of its lopsidedness) yet is a necessary political strategy to guard against the absorption of Indigenous people into the settler fold, which would represent settler colonialism’s final victory. The battle here is between a ‘settler colonialism [that] is designed to produce a fundamental discontinuity as its “logic of elimination” runs its course until it actually extinguishes the settler colonial relation’ and an anti-colonial struggle that ‘must aim to keep the settler-indigenous relationship going’ (2011: 7). In other words, the categorical distinction produced by the frontier must be maintained in order to struggle against its effects. Given the lack of options presented to Indigenous peoples by Veracini (2014: 315), his conclusion that settler decolonisation demands a ‘radical, post-settler colonial passage’ is perhaps not surprising – although he has ‘no suggestion as to how this may be achieved and [is] pessimistic about its feasibility’. Scholars have long reckoned with the ambivalence of the settler colonial situation, which is simultaneously colonial and postcolonial, colonising and decolonising (Curthoys, 1999: 288). Given the generally dreadful Fourth World circumstances facing many Indigenous peoples in settler societies, it could be argued that there is good reason for such pessimism. The settler colonial paradigm, in this sense, offers an important caution against celebratory narratives of progress. Wolfe (1994), it must be recalled, wrote the original articulation of his thesis precisely against the idea of ‘historical rupture’ that dominated in Australia post-Mabo, and was thus as much a scholarly intervention as it was a political challenge to the idea of Australia having broken with its colonial past. Nonetheless, the fatalism of the settler colonial paradigm—whereby decolonisation is by and large put beyond the realms of possibility—has seen it come under considerable critique for reifying settler colonialism as a transhistorical meta-structure where colonial relations of domination are inevitable (Macoun & Strakosch, 2013: 435; Snelgrove et al., 2014: 9). Not only does Wolfe’s ontology erase contingency, heterogeneity and (crucially) agency (Merlan, 1997; Rowse, 2014), but its polarised framework effectively ‘puts politics to death’ (Svirsky, 2014: 327). In response to such critiques, Wolfe (2013a: 213) suggests that ‘the repudiation of binarism’ may just represent a ‘settler perspective’. However, as Elizabeth Povinelli (1997: 22) has astutely shown, it is in this regard that the totalising logic of Wolfe’s structure of invasion rests on a disciplinary gesture where ‘any discussion which does not insist on the polarity of the [settler] colonial project’ is assimilationist, worse still, genocidal in effect if not intent. Any attempt to ‘explore the dialogical or hybrid nature of colonial subjectivity’—which would entail working beyond the bounds of absolute polarity—is disciplined as complicit in the settler colonial project itself, leaving ‘the only nonassimilationist position one that adheres strictly and solely to a critique of [settler] state discourse’. This gesture not only disallows the possibility of counter-publics and strategic alliances (even limited ones), but also comes dangerously close to ‘resistance as acquiescence’ insofar as the settler colonial studies scholar may malign the structures set in play by settler colonialism, but only from a safe distance unsullied by the messiness of ambivalences and contradictions of settler and Native subjectivities and relations. Opposition is thus left as our only option, but, as we know from critical anti-colonial and postcolonial scholarship, opposition in itself is not decolonisation.

#### Existential risks mitigation is a decolonial imperative of care.

Offord, 17—Faculty of Humanities, School of Humanities Research and Graduate Studies, Bentley Campus (Baden, “BEYOND OUR NUCLEAR ENTANGLEMENT,” Angelaki, 22:3, 17-25, dml) [ableist language modifications denoted by brackets]

You are steered towards overwhelming and inexplicable pain when you consider the nuclear entanglement that the species Homo sapiens finds itself in. This is because the fact of living in the nuclear age presents an existential, aesthetic, ethical and psychological challenge that defines human consciousness. Although an immanent threat and ever-present danger to the very existence of the human species, living with the possibility of nuclear war has infiltrated the matrix of modernity so profoundly as to paralyse [shut down] our mind-set to respond adequately. We have chosen to ignore the facts at the heart of the nuclear program with its dangerous algorithm; we have chosen to live with the capacity and possibility of a collective, pervasive and even planetary-scale suicide; and the techno-industrial-national powers that claim there is “no immediate danger” ad infinitum.8 This has led to one of the key logics of modernity's insanity. As Harari writes: “Nuclear weapons have turned war between superpowers into a mad act of collective suicide, and therefore forced the most powerful nations on earth to find alternative and peaceful ways to resolve conflicts.”9 This is the nuclear algorithm at work, a methodology of madness. In revisiting Jacques Derrida in “No Apocalypse, Not Now (Full Speed Ahead, Seven Missiles, Seven Missives),”10 who described nuclear war as a “non-event,” it is clear that the pathology of the “non-event” remains as active as ever even in the time of Donald Trump and Kim Jong-un with their stichomythic nuclear posturing. The question of our times is whether we have an equal or more compelling capacity and willingness to end this impoverished but ever-present logic of pain and uncertainty. How not simply to bring about disarmament, but to go beyond this politically charged, as well as mythological and psychological nuclear algorithm? How to find love amidst the nuclear entanglement; the antidote to this entanglement? Is it possible to end the pathology of power that exists with nuclear capacity? Sadly, the last lines of Nitin Sawhney's “Broken Skin” underscore this entanglement: Just 5 miles from India's nuclear test site Children play in the shade of the village water tank Here in the Rajasthan desert people say They're proud their country showed their nuclear capability.11 As an activist scholar working in the fields of human rights and cultural studies, responding to the nuclear algorithm is an imperative. Your politics, ethics and scholarship are indivisible in this cause. An acute sense of care for the world, informed by pacifist and non-violent, de-colonialist approaches to knowledge and practice, pervades your concern. You are aware that there are other ways of knowing than those you are familiar and credentialed with. You are aware that you are complicit in the prisons that you choose to live inside,12 and that there is no such thing as an innocent bystander. You use your scholarship to shake up the world from its paralysis, abjection and amnesia; to unsettle the epistemic and structural violence that is ubiquitous to neoliberalism and its machinery; to create dialogic and learning spaces for the work of critical human rights and critical justice to take place. All this, and to enable an ethics of intervention through understanding what is at the very heart of the critical human rights impulse, creating a “dialogue for being, because I am not without the other.”13 Furthermore, as a critical human rights advocate living in a nuclear armed world, your challenge is to reconceptualise the human community as Ashis Nandy has argued, to see how we can learn to co-exist with others in conviviality and also learn to co-survive with the non-human, even to flourish. A dialogue for being requires a leap into a human rights frame that includes a deep ecological dimension, where the planet itself is inherently involved as a participant in its future. This requires scholarship that “thinks like a mountain.”14 A critical human rights approach understands that it cannot be simply human-centric. It requires a nuanced and arresting clarity to present perspectives on co-existence and co-survival that are from human and non-human viewpoints.15 Ultimately, you realise that your struggle is not confined to declarations, treaties, legislation, and law, though they have their role. It must go further to produce “creative intellectual exchange that might release new ethical energies for mutually assured survival.”16 Taking an anti-nuclear stance and enabling a post-nuclear activism demands a revolution within the field of human rights work. Recognising the entanglement of nuclearism with the Anthropocene, for one thing, requires a profound shift in focus from the human-centric to a more-than-human co-survival. It also requires a fundamental shift in understanding our human culture, in which the very epistemic and rational acts of sundering from co-survival with the planet and environment takes place. In the end, you realise, as Raimon Panikkar has articulated, “it is not realistic to toil for peace if we do not proceed to a disarmament of the bellicose culture in which we live.”17 Or, as Geshe Lhakdor suggests, there must be “inner disarmament for external disarmament.”18 In this sense, it is within the cultural arena, our human society, where the entanglement of subjective meaning making, nature and politics occurs, that we need to disarm. It is 1982, and you are reading Jonathan Schell's The Fate of the Earth on a Sydney bus. Sleeping has not been easy over the past few nights as you reluctantly but compulsively read about the consequences of nuclear war. For some critics, Schell's account is high polemic, but for you it is more like Rabindranath Tagore: it expresses the suffering we make for ourselves. What you find noteworthy is that although Schell's scenario of widespread destruction of the planet through nuclear weaponry, of immeasurable harm to the bio-sphere through radiation, is powerfully laid out, the horror and scale of nuclear obliteration also seems surreal and far away as the bus makes its way through the suburban streets. A few years later, you read a statement from an interview with Paul Tibbets, the pilot of “Enola Gay,” the plane that bombed Hiroshima. He says, “The morality of dropping that bomb was not my business.”19 This abstraction from moral responsibility – the denial of the implications on human life and the consequences of engagement through the machinery of war – together with the sweeping amnesia that came afterwards from thinking about the bombing of Hiroshima, are what make you become an environmental and human rights activist. You realise that what makes the nuclear algorithm work involves a politically engineered and deeply embedded insecurity-based recipe to elide the nuclear threat from everyday life. The spectre of nuclear obliteration, like the idea of human rights, can appear abstract and distant, not our everyday business. You realise that within this recipe is the creation of a moral tyranny of distance, an abnegation of myself with the other. One of modernity's greatest and earliest achievements was the mediation of the self with the world. How this became a project assisted and shaped through the military-industrial-technological-capitalist complex is fraught and hard to untangle. But as a critical human rights scholar you have come to see through that complex, and you put energies into challenging that tyranny of distance, to activate a politics, ethics and scholarship that recognises the other as integral to yourself. Ultimately, even, to see that the other is also within.20

#### Industrial ag is sustainable

Ted Nordhaus & Dan Blaustein-Rejto 21. \*Founder and executive director of the Breakthrough Institute. \*\*Director of food and agriculture at the Breakthrough Institute. “Big Agriculture Is Best”. Foreign Policy. 4-18-2021. <https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/>

Moreover, organic farms, large and small, don’t actually outperform large conventional farms by many important environmental measures. Scale, technology, and productivity make good environmental sense and economic sense. Because organic farming requires more land for every calorie or pound produced, a large-scale shift to organic farming would entail converting more forest and other land to farming, resulting in greater habitat loss and more greenhouse gas emissions. And while organic farming doesn’t use synthetic pesticides or fertilizers, it often results in greater nitrogen pollution because manure is a highly inefficient way to deliver nutrients to crops.

Another benefit of large-scale U.S. farms is that because they are so efficient, economically and environmentally, they are also able to produce vastly more food than Americans can consume, making the country the world’s largest agricultural exporter as well.

That benefits the U.S. economy, of course, but it also comes with an environmental benefit for the world. In the contemporary environmental imagination, highly productive, globally traded agriculture is a bad thing—poisoning the land at home and undermining food sovereignty abroad. But in reality, a pound of grain or beef exported from the United States almost always displaces a pound that would have been produced with more land and greenhouse gas emissions somewhere else.

# 2NC

## Regs CP

#### The United States federal government should expand the maximum fine authority for enforcement of the counterplan.

#### The case only ruled against Bowman on grounds of monopoly enforcement

1AC Shiva 16 (Vandana – physicist, world-renowned environmental thinker and activist, Biopiracy: The Plunder of Nature and Knowledge, p. vii-xviii, shae)

I wrote Biopiracy to explore the ethical, ecological, and economic consequences of patents on life. There were no biopiracy cases yet, but it was evident that when everything is patentable, the biodiversity and indigenous knowledge of countries of the South will also be patented. The door to patents on seed and patents on life was opened by genetic engineering. By adding just one new gene to the cell of a plant, corporations claimed they had invented and created the seed, the plant, and all future seeds, which are now their property. In other words, GMO meant "God/Move Over:' Big Biotech claimed legal personhood and the role of creator. They have declared seed to be their "invention,” their patented property. A patent is an exclusive right granted for an "invention,” which allows the patent holder to exclude everyone else from making, selling, distributing, and using the patented product. With patents on seed, this implies that the farmers' rights to save and share seed-something farmers have done for millennia-is now defined as "theft,” an "intellectual property crime.” In defining seed as their creation and invention, corporations like Monsanto shaped the Global Intellectual Property and Patent Laws so that they could legally prevent farmers from saving and sharing seeds. This is how the Trade-Related Intellectual Property Rights (TRIPS) Agreement of the World Trade Organization was born. Article 27.3(b) of the TRIPS Agreement states: "Parties may exclude from patentability plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, parties shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof." This misnamed "protection of plant varieties" is precisely what prohibits the free exchange of seeds between farmers, threatening their subsistence and ability to save and exchange seeds amongst one another. The TRIPS clause on patents on life was due for a mandatory review in 1999. In its submission, India stated, "Clearly, there is a case for re-examining the need to grant patents on lifeforms anywhere in the world. Until such systems are in place, it may be advisable to ... exclude patents on all lifeforms:' The African group added: The African Group maintains its reservations about patenting any life forms as explained on previous occasions by the Group and several other delegations. In this regard, the Group proposes that Article 27.3(b) be revised to prohibit patents on plants, animals, micro-organisms, essentially biological processes for the production of plants or animals, and non-biological and microbiological processes for the production of plants or animals. For plant varieties to be protected under the TRIPS Agreement, the protection must clearly, and not just implicitly or by way of exception, strike a good balance with the interests of the community as a whole and protect farmers' rights and traditional knowledge, and ensure the preservation of biological diversity. Life forms, plants, and seeds are all evolving, self-organized, sovereign beings. They have intrinsic worth, value, and standing. Owning life by claiming it to be a corporate invention is ethically and legally wrong. Patents on seeds are legally wrong because seeds are not an invention. Patents on seeds are ethically wrong because seeds are life forms; they are our kin, members of our earth family. Life is Not an Invention IPRs expanded to cover living systems and organisms is a distortion of "innovation'' and "invention.” This distortion was introduced by corporations such as Monsanto in the TRIPS (Trade-Related Intellectual Property Rights) Agreement of the WTO. Corporate influence on patent law began with the drafting of the TRIPS Agreement of the WTO by the Intellectual Property Committee (IPC) of multilateral corporations. As I have written in Biopiracy, James Enyart of Monsanto is on record illustrating just how deeply the TRIPS agreement is aligned to corporate interest and against the interests of nations and their citizens: Once created, the first task of the IPC was to repeat the missionary work we did in the U.S. in the early days, this time with the industrial associations of Europe and Japan to convince them that a code was possible .... Besides selling our concepts at home, we went to Geneva where [we] presented [our] document to the staff of the GATT Secretariat. We also took the opportunity to present it to the Geneva-based representatives of a large number of countries ... What I have described to you is absolutely unprecedented in GATT. Industry has identified a major problem for international trade. It crafted a solution, reduced it to a concrete proposal, and sold it to our own and other governments ... The industries and traders of world commerce have played simultaneously the role of patients, the diagnosticians, and the prescribing physicians. Intellectual Property Rights are defined as property in the "products of the mind,” including patents. Over the last two decades, under the influence of corporations, patent laws have taken a different direction-from protecting the interests of genuine inventions and ideas to ownership of life and control over survival essentials like seed and medicine. Such monopolies violate article 21 of the Indian constitution, which guarantees all citizens the right to life. The first case in the WTO was initiated by the U.S. to force India to change its patent laws. Methods of agriculture and plants were excluded from patentability in the Indian patent act to ensure that seed, the first link in the food chain, was held as a common property resource in the public domain and that farmers' inalienable right to save, exchange, and improve seed was not violated. Only process patents were allowed in medicine. The pharmaceutical corporations, which are the same as the biotechnology corporations, are seeking absolute monopolies on seed and medicine through patents. I worked closely with the government and Indian parliament to ensure that farmers' rights and the integrity oflife forms were respected in Indian law. When India amended her patent acts, safeguards consistent with TRIPS were introduced. Article 3 defines what is not patentable subject matter. Article 3(d) excludes as inventions "the mere discovery of any new property or new use for a known substance.” This was the article under which Novartis's patent claim to a known cancer drug was rejected. This is the article that Novartis tried to challenge in the Supreme court and lost. Article 3(j) excludes from patentability "plants and animals in whole or in any part thereof other than microorganisms; but including seeds, varieties, and species, and essentially biological processes for production or propagation of plants and animals.” This was the article used by the Indian patent office to reject a Monsanto patent on climate-resilient seeds. While the Indian patent office rejected a Monsanto patent, the U.S. Supreme Court ruled on behalf of Monsanto against a farmer called Bowman who had not bought seeds from Monsanto but instead purchased soybeans from an Indiana grain elevator. The U.S. Supreme court ruling creates intellectual property in future generations of a grain or seed. This is biologically and intellectually incorrect because all that Monsanto has done is add a gene for resistance to its proprietary herbicide Roundup, to 1) claim ownership of any plant/animal that gene finds its way into and 2) to enforce a Roundup monopoly. Adding a gene of Roundup resistance does not amount to "inventing" or "creating" a soya bean seed, its future generations, and the species the gene pollutes. India's law titled Plant Variety Protection and Farmers' Rights Act 2001 has a clause on farmers' rights. I was appointed to be a member of the expert group that drafted the rules. A farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act. There is no such protection for citizens and farmers in the U.S. U.S. citizens are not only being denied their right to know what they are eating, but are now being denied their right and duty to save and exchange seed. The Seed Laws of 2004 have been used in Pennsylvania, Maryland, and, now, Minnesota to shut down seed libraries. Biopiracy is Not "Innovation'' Over the past decade, corporations have gained control over the diversity of life on earth and people's indigenous knowledge through new property rights. There is no innovation involved in these cases; they are instruments of monopoly control over life itself. Patents on living resources and indigenous knowledge are an enclosure of the biological and intellectual commons. Life forms have been redefined as "manufacture" and "machines,” robbing life of its integrity and self-organization. Traditional knowledge is being pirated and patented, unleashing a new epidemic of biopiracy. • Patenting of Neem The patenting of the fungicidal properties of Neem was a blatant example of biopiracy and indigenous knowledge. On May 10, the European Patent Office (EPO) revoked the patent (0436257 Bl) granted to the United States Department of Agriculture and the multinational corporation W. R. Grace for a method of controlling fungi on plants by the aid of an extract of seeds from the Neem tree. The challenge to the patent of Neem was made at the Munich Office of the EPO by three entities- the European Parliament's Green Party, Dr. Vandana Shiva of RFSTE, and the International Federation of Organic Agriculture-and challenged it on the grounds of "lack of novelty and inventive step:' They demanded the invalidation of the patent ( among others) on the grounds that the fungicide qualities of the Neem and its use has been lmown in India for over 2,000 years and used to make insect repellents, soaps, cosmetics, and contraceptives. The Neem patent was finally revoked. • Biopiracy of Basmati On July 8, 1994, Rice Tee Inc., a Texas-based company, filed a generic patent (Patent No. 5663484) on basmati rice lines and grains in the United States Patent and Trademark Office (USP TO) with 20 broad claims designed to create a complete rice monopoly patent, which included planting, harvesting, collecting, and even cooking. Though Rice Tee claimed to have "invented" Basmati rice, they accepted the fact that it has been derived from several rice accessions from India. Rice Tee had claimed a patent for inventing novel Basmati lines and grains. After protests and the case in the Supreme Court of lndia, the U.S. Patent and Trademark Office struck down most sections of the Basmati patent. • Syngenta's Attempt at Biopiracy of India's Rice Diversity Syngenta, the biotech giant, tried to grab the precious collections of 22,972 varieties of paddy, India's rice diversity, from Chattisgarh in India. It had signed a MoU with the - Indira Gandhi Agricultural University (IGAU) for access to Dr. Richharia's priceless collection of rice diversity, which he had looked after as if the rice varieties were his own children. The mass agitation by the peoples' organization, farmers' unions, civil liberty groups, women's groups, students' groups, and biodiversity conservation movements against Syngenta and IGAU bore results, and Syngenta called off the deal. • Monsanto's Biopiracy of Indian Wheat European Patent Office in Munich revoked Monsanto’s patent on the Indian wheat variety called Nap Hal. Monsanto, the biggest seed corporation, was assigned the patent (No. EP 0445929 Bl) on wheat on May 21, 2003, by the EPO under the simple title, "plants:' On January 27, 2004, The Research Foundation for Science, Technology and Ecology along with Greenpeace and Bharat Krishak Samaha filed a petition at the EPO challenging the patent rights given to Monsanto that led to the patent being revoked. • ConAgra's Bio piracy Claim on Atta (Wheat flour) Atta, a staple food and ingredient within India, is currently under threat from the corporation ConAgra, who filed a "novel" patent (patent No. 6,098,905) claiming the rights to an atta processing method, and was granted the patent on August 8, 2000. The method that ConAgra is claiming to be novel has been used throughout South Asia by thousands of atta chakkis, and so cannot justly be claimed as a novel patent. • Monsanto's Biopiracy of Indian Melons In May 2011, the U.S. company Monsanto was awarded a European patent on conventionally bred melons (EP 1 962 578). These melons, which originally stem from India, have a natural resistance to certain plant viruses. Using conventional breeding methods, this type of resistance was introduced to other melons and is now patented as a Monsanto "invention:' The actual plant disease, Cucurbit yellow stunting disorder virus (CYSDV), has been spreading through North America, Europe, and North Africa for several years. The Indian melon, which confers resistance to this virus, is registered in international seed banks as PI 313970. With the new patent, Monsanto can now block access to all breeding material inheriting the resistance derived from the Indian melon. The patent might discourage future breeding efforts and the development of new melon varieties. Melon breeders and farmers could be severely restricted by the patent. At the same time, it is already known that further breeding will be necessary to produce melons that are actually protected against the plant virus. DeRuiter, a well-known seed company in the Netherlands, originally developed the melons. DeRuiter used a nonsweet melon from India designated as PI 313970. Monsanto acquired DeRuiter in 2008 and now owns the· patent. The patent was opposed by several organizations in 2012. • Biopiracy of Brinjal The development of Bt brinjal by Monsanto and its Indian partner Mahyco is another classic example for biopiracy. The company has accessed nine Indian varieties of brinjal to develop their genetically modified vegetable without prior permission from the NBA or the relevant State and local boards. This is a violation of the Biological Diversity Act 2002, according to the Environmental Support Group (ESG), which lodged the formal complaint with the Karnataka Biodiversity Board on February 15, 2010, soon after the government put a moratorium on Bt brinjal on health and safety grounds (Priscila Jebaraj, Development of Bt brinjal a case of biopiracy: The Hindu, August 10, 2011). • Monsanto's Biopiracy of BT for Bt Cotton The Andhra Pradesh Biodiversity Board, a statutory body setup under the Biological Diversity Act 2002 by the Union government of India, is demanding royalty payments from Monsanto India Ltd. to the tune of 2% of the corporation's sales revenue. The Biodiversity Board argues that the Bt patent on Monsanto's Bt cotton is biopiracy-Monsanto India has "stolen'' genetic information from Bacillus thuringiensis (Bt) bacteria found in the soils of Mahanandi village -in the Kurnool district of Andhra Pradesh. This bacteria strain, the board claims, was then used to develop the genetically modified bollworm-resistant Bt cotton seeds that Monsanto sells in India. The six gene giants-Monsanto, Syngenta, Dupont, Dow, Bayer, and BASF-that take patents on seeds and biodiversity are also pushing genetically engineered seeds, such as Monsanto's Bt cotton. Genetically engineered crops are contaminating and polluting biodiversity, destroying the integrity of genetic resources; e.g., the corn in Mexico's center of genetic diversity has been found to be contaminated by Bt corn. New IPR laws are creating monopolies over seeds and plant genetic resources. Under pressure from World Bank, the Seed Policy of 1998 started to dismantle-India's robust public sector seed supply system. Monsanto has pushed its Bt cotton into Indian agriculture through corruption and fraud at every step. Bt cotton was commercialized in India during April 2002, with Monsanto being the major technology provider and operating through 60 regional biotech companies holding Bt licenses. Under international agreement, Monsanto/Mahyco can charge a royalty of 20% for three years and 5% for another three years. Even though Monsanto does not have a patent on Bt cotton in India, it collects royalties as fees for trait value. During 2004, the farmer had to pay Rs 1,600 for a single 450 gm packet of Bt cotton seeds, which included· a technology fee component of Rs 725. The intervention of state governments forced the company to slash the seed price. However, Monsanto still makes about Rs 34 billion per year from Indian farmers. A comparison of organic and Bt cotton seed prices during the last two decades will be relevant in this context. During the 1990s, the local seed cost was around Rs 9 per Kg. By 2004, the cost skyrocketed to Rs 1,650 and then to Rs 1,800 for less than half a kilogram (450 gm). At present, the seed cost is Rs '650 to Rs 920 for 450 gm. However, the current price still exhibits a disproportional increase when compared to the cost of seed (Rs 9) before the introduction of Bt. Other mandated inputs like fertilizers, pesticides, and utilities like water and electricity also saw a big rise in cost from the mid to late 1990s. The rising input costs have forced farmers into a debt trap. The states under the cotton belt have the highest number of farmer suicides due to agricultural indebtedness. From 1995 to 2015, more than 300,000 farmers have been driven to suicide. Most of them were located in the Bt cotton belt. • Monsanto's Biopiracy of Climate Resilience For millennia, farmers have innovated and evolved varieties with unique properties. Farmers' innovation focuses on breeding for climate resilience and for conservation of biodiversity. Giant corporations, which have destroyed biodiversity by promoting monocultures and uniformity, are now using biopiracy patents to claim farmers' collective, cumulative innovation as their "invention.” The latest in such biopiracy is the patenting of climate-resilient traits. At Navdanya, our community seed banks have been conserving climate-resilient crops since 1987, allowing us to distribute open-pollinated climate-resilient seeds in the aftermath of extreme climate events. The corporations are pirating the collective innovation of farmers in breeding crops that are resilient to droughts, floods, and salinity. The biotechnology industry is spreading the misconception that without genetic engineering, we will not be able to evolve crops with climate resilience. Farmers' varieties have high grain yields and high straw yields, which help to further increase soil fertility as well as its capacity for retaining moisture, either as green manure or as fodder for cattle, which in turn produce manure for the soil. In addition, farmers' varieties have been selected for their long-term ability to withstand several stresses and yet produce consistent yields. Thus farmers' varieties are ecologically sound varieties as well as food security-sound varieties. The resilience and wide adaptability of farmers' varieties is clear from the fact that while commercial and public sector varieties of salinity-resistant rice failed to rehabilitate agriculture in Ersama, Orissa in the aftermath of the super cyclone and floods of 1999, a farmers' variety from the Navdanya Project in West Bengal proved extremely successful, and is in high demand today. Farmers have developed and have been using these varieties for over hundreds of years; genetic engineers like Monsanto are just waking up to their potential. Corporations have taken out 1,500 patents on climate-resilient crops. The climate-resilient traits will become increasingly important in times of climate instability. Along coastal areas, farmers have evolved flood-tolerant and salt-tolerant varieties of rice such as Bhundi, Kalambank, Lunabakada, Sankarchin, Nalidhulia, Ravana, Seulapuni, and Dhosarakhuda. Crops such as millet have been selected for drought tolerance and provide food security in water-scarce regions and water-scarce years. Monsanto applied for blanket patents for "Methods of enhancing stress tolerance in plants and methods thereof.' (The title of the patent was later amended to “A method of producing a transgenic plant, with increasing heat tolerance, salt tolerance, or drought tolerance.”) These traits have been selected over millennia by our farmers, who have applied their knowledge of breeding. On July 5, 2013, Hon Justice Prabha Sridevi, Chair of the Intellectual Property Appellate Board of India, and Hon Shri DPS Parmar, technical member, dismissed Monsanto's appeal against the rejection of these patents that claim Monsanto has invented all resilience. The patenting of seeds and life can only lead to biopiracy. Just as the jurisprudence of Terra Nullius-which was used to colonize non-European peoples-defined the land as empty and allowed the takeover of territories by the European colonies, the jurisprudence of intellectual property rights related to life forms is in fact a jurisprudence of Bio Nullius-life empty of intelligence. The Earth is defined by her colonizers as dead matter, deemed unable to create, and farmers (lacking the lab coats we see in toothpaste commercials) are deemed to have empty heads that cannot innovate. The worldview of **Bio Nullius**-empty life-**does violence** and injustice **to the earth**, to farmers, and to all citizens. This violence of the Earth is **rooted in the denial of the creativity and rights of the Earth** as well as in the displacement of diversity. Every seed is an embodiment of millennia of nature's evolution and centuries of farmers' breeding. It is the distilled expression of the intelligence of the Earth and of farming communities. Farmers have bred seeds for diversity, resilience, taste, nutrition, health, and adaptation to local agro-ecosystems. Industrial breeding treats nature's contributions and farmers' contributions as nothing. My life has been dedicated to protecting the integrity of life, biodiversity, and indigenous knowledge. Seed saving is the foundation of Swaraj in our times. It is vital to our ability to address hunger and malnutrition and to bring back taste, nutrition, and quality in our food. Without conservation and evolution of the biodiversity of our seeds, we will not be able to adapt to climate change. Creating community seed banks is a significant step toward creatively resisting patents on life. Refusing to let our minds and lives be colonized by corporate constructions like patents on life is at the heart of freedom in our times.

#### 2---“Do both” is antitrust duplication---collapses resources, effectiveness, and signaling

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Disputes over clearance can have tangible adverse effects on enforcement. First, some have commented that delays caused by clearance disputes can narrow the efficacy of remedial options, particularly with mergers. As Sen. Richard Blumenthal has commented, “The Big Tech companies are not waiting for the agencies to finish their cases. They are structuring their companies so that you can’t unscramble the egg.” Structural remedies are favored by Delrahim, who has commented that alternative, behavioral remedies should be used sparingly: “The division has a strong preference for structural remedies over behavioral ones. … The Antitrust Division is a law enforcer and, even where regulation is appropriate, it is not equipped to be the ongoing regulator.”

Second, disputes over clearance and, more so, duplicative investigations waste agency resources, threaten to blunt their effectiveness, and can lead to inconsistent and confusing governmental positions. In the Sept. 17 oversight hearing, Simons and Delrahim were both criticized for requesting an increase in funding: “As you both acknowledged, both of you could use, and desperately need, more resources. That being the case, it makes no sense to me that we should have duplication of effort, when that has a tendency inevitably to undermine the effectiveness of what you’re doing.” Duplicative investigations dilute the specialization that is a principal goal of the agencies’ clearance agreement and raise the risk that one agency will take legal positions that undercut the other. No doubt the DOJ’s amicus brief in the Qualcomm case influenced the U.S. Court of Appeals for the Ninth Circuit’s decision to issue a stay pending appeal.

So how will the FTC and DOJ resolve their latest turf war? Perhaps they will revisit their clearance agreement and decide to split their authority by company or the business practice being investigated, based on prior agency experience, rather than by industry as Appendix A currently does. Or maybe Congress will decide to consolidate civil antitrust enforcement jurisdiction under one agency. That seems like a long shot considering the political implications. However, during the Senate’s antitrust oversight hearing, Sen. Josh Hawley proposed “cleaning up the overlap in jurisdiction by removing it from one agency” and “clearly designating enforcement authority to one agency.” One thing is sure—the agencies should not be duplicating civil antitrust investigations. Stay tuned.

#### It’s duplicative and upsets the balance.

Claire Guo 19. Juris Doctor, Peking University School of Transnational Law. Intersection of Antitrust Laws with Evolving FRAND Terms in Standard Essential Patent Disputes, 18 J. MARSHALL REV. INTELL. PROP. L. 259 (2019). Pg. 278

The practice of three major jurisdictions suggests that the intersection of FRAND terms and antitrust laws is not a fixed process. Instead, it changes as the stipulations of FRAND evolve to have clarity and transparency. In particular, the practice suggests a general trend of less antitrust intervention into FRAND breaches when concrete competition harm is not present. One reason is that when FRAND has expanded into negotiation protocols, mere disobedience of FRAND procedurally without follow-up actions, such as filing injunctions or excessive demand, could not possibly give rise to antitrust concerns. The other reason is that the parallel enforcement of FRAND and antitrust laws is duplicative to some extent. Both FRAND and antitrust laws could be used to address the monopoly power and abusive conducts of SEPs owners resulting from the standardization process. Assuming FRAND has functioned effectively as expected, additional antirust intervention seems redundant and risks upset the balance already reached by FRAND obligation.

#### 3---Deters injunctions, overburdens SEP owners, and links to the net benefit---impedes innovation.

Claire Guo 19. Juris Doctor, Peking University School of Transnational Law. Intersection of Antitrust Laws with Evolving FRAND Terms in Standard Essential Patent Disputes, 18 J. MARSHALL REV. INTELL. PROP. L. 259 (2019). Pg. 282

Another reason that antitrust laws need to step down from addressing FRAND violations is the risk of impeding innovation and standardization processes. The antitrust laws protect competition which is a public interest. That is why the enforcement of antitrust laws entails administrative fines and punitive damages. Breaking antitrust laws in EU and China may lead to fines of up to 10% of last year’s turnover of the undertaking.165 Qualcomm was fined both by NDRC for 1 billion dollars in 2015, and then by EU commission for over 1 billion dollars again in 2018.166 In the U.S., companies can be fined up to 100 million dollars or double gains/loss;167 private litigations also offer treble damages.168 Such tough penalties are imposed because the concerned antitrust violation hurts competition- an essential component of market economy and society progress. The U.S. courts are refrained from intervening in opportunistic FRAND breaches from lawfully obtained monopolization, because the evasion of a pricing constraint may hurt consumers but not the competitive process that warrants treble damages.169 Thus, when FRAND terms have effectively managed the monopoly power of SEP owner to the extent that mere FRAND breaches could not result in competition harm, the forceful intrusion of antitrust laws would only deter SEP owners from pursuing injunctions and devalue the essential patents.170 In the end, the antitrust liability may over burden the SEP owners to innovate or to promote standardization. 171

#### Regs solve via contract law

MAKAN DELRAHIM 18. Assistant Attorney General Antitrust Division U.S. Department of Justice. The “New Madison” Approach to Antitrust and Intellectual Property Law. Department of Justice. 03-16-2018. Pg. 6-10

To understand what I mean when I say that patent hold-up is not an antitrust problem, it is important to step back to consider the purpose of antitrust law—what it does, and what it should not do. At its core, antitrust law aims to protect competition and consumers.19 Antitrust law is guided by a consumer welfare standard, which dates back to the origins of the Sherman Act.20 The ultimate focus on the consumer gained academic prominence in the late 1970s and 1980s through the intellectual leadership of Judge Robert Bork,21 Judge Frank Easterbrook,22 and others.23 This standard sharpens the focus of antitrust scrutiny to anticompetitive practices that are harmful to consumers, rather than competitors, so that the antitrust laws are not misapplied to advance social goals unrelated to consumer welfare and efficiency. Importantly, however, the consumer welfare standard is not synonymous with a policy always favoring lower prices.24 For example, high demand for an exciting new product may drive up its price, but that may simply reflect consumer preference for a superior product relative to alternatives.25 Antitrust law is intended to protect this behavior, not punish it, so that others will have incentives to innovate and compete themselves, all for the benefit of consumers.26 Such dynamic competition should be encouraged by our enforcement policies. Rather than focusing on prices in isolation, antitrust law instead protects consumers where practices also harm competition—that is, they harm some “competitive process” in a manner that causes harm to consumers in the form of above-competitive prices, lower output, or reduced efficiency.27 Indeed, directly showing harm to end-consumers is not always necessary to prove a violation of the antitrust laws. For example, where collusion among buyers pushes input prices down—what economists call a monopsony effect—that may violate the antitrust laws because there is harm to competition even though it results in lower prices.28 This is where theories that unilateral patent hold-up is an antitrust problem go wrong. Stating that a patent holder can derive higher licensing fees through hold-up simply reflects basic commercial reality. Condemning this practice, in isolation, as an antitrust violation, while ignoring equal incentives of implementers to “hold out,” risks creating “false positive” errors of over-enforcement that would discourage valuable innovation. Advocates of using antitrust law to reduce the supposed risk of patent hold-up fail to identify an actual harm to the competitive process that warrants intervention. If an inventor participates in a standard-setting process and wins support for including a patented technology in a standard, that decision does not magically transform a lawful patent right into an unlawful monopoly. To be sure, that decision gives the patent holder some bargaining power in claiming a piece of the surplus created by standardization. And, it would require the patent holder to live up to commitments as they would have bargained for it, enforceable by contract laws. But standard setting decisions are intended to be a recognition that a technology is superior to its alternatives. A favorable SSO decision, like a patent itself, is a reward for an innovator’s meritorious contribution whose wide-ranging benefits can ripple throughout the economy, contributing to dynamic competition. Arguments that inclusion in a standard confers market power that could harm competition typically rest on the unreasonable assumption that the winning technology is no better than its rivals.29 It is therefore unsurprising that proponents of using antitrust law to police FRAND commitments principally rely on models devoid of economic or empirical evidence that hold-up is a real phenomenon,30 much less one that harms competition. Since hold-up theories gained traction in the early 2000s, it is striking that they still remain an empirical enigma in the academic literature.31 Antitrust law demands evidence-based enforcement, without which there is a real threat of undermining incentives to innovate. That is why I believe so strongly that antitrust law should play no role in policing unilateral FRAND commitments where contract or common law remedies would be adequate.32 I worry that courts and enforcers have overly indulged theories of patent holdup as a supposed competition problem,33 while losing sight of the basic policies of antitrust law. They lose sight of the fact that antitrust law is not just remedial; it is, importantly, intended to deter through the threat of treble damages.34 As enforcers, we have a responsibility to ensure that antitrust policy remains sound, so that U.S. consumers continue to enjoy the benefits of dynamic competition and innovation, and so we do not export unsound theories of antitrust liability abroad, where economically dubious enforcement actions can have serious consumer-harming effects on U.S. businesses, consumers, and workers.

#### New plank solves deterrence

Samuel Weinstein 19. Assistant Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University. “Article: Financial Regulation in the (Receding) Shadow of Antitrust.” *Temple Law Review* (91): 487-491.

The relative weakness of remedies typically available to regulatory agencies compounds these problems. Most agencies do not have access to remedies as stringent as an antitrust court's power to assign treble damages under the Sherman Act or to permanently enjoin anticompetitive conduct. The administrative record in Trinko showed that Verizon admitted it had violated its open-access commitments and voluntarily paid $ 3 million to the FCC and $ 10 [\*488] million to competitive local exchange carriers. While the Trinko opinion relied on these sanctions in part for its conclusion that the FCC's regulatory regime had fulfilled the antitrust function, the FCC Chairman subsequently told Congress that the Commission's maximum fine authority was in many instances "insufficient to punish and deter violations" that incumbent local exchange carriers like Verizon had committed with the aim of "slow[ing] the development of local competition." Among other measures, Chairman Powell recommended increasing the FCC's forfeiture authority against common carriers for single continuing violations of the Telecommunications Act from $ 1.2 million to "at least $ 10 million."

#### 2---Antitrust laws are enforced by the DOJ and FTC

DOJ and FTC 16. Antitrust Guidance for Human Resource Professionals Department of Justice Antitrust Division Federal Trade Commission. https://www.justice.gov/atr/file/903511/download

This document is intended to alert human resource (HR) professionals and others involved in hiring and compensation decisions to potential violations of the antitrust laws. The Department of Justice Antitrust Division (DOJ or Division) and Federal Trade Commission (FTC) (collectively, the federal antitrust agencies) jointly enforce the U.S. antitrust laws, which apply to competition among firms to hire employees. An agreement among competing employers to limit or fix the terms of employment for potential hires may violate the antitrust laws if the agreement constrains individual firm decisionmaking with regard to wages, salaries, or benefits; terms of employment; or even job opportunities. HR professionals often are in the best position to ensure that their companies’ hiring practices comply with the antitrust laws. In particular, HR professionals can implement safeguards to prevent inappropriate discussions or agreements with other firms seeking to hire the same employees.

#### 3---They are alternatives not subsets.

Stephen G. Breyer 87. SCOTUS Justice since 1994. California Law Review Volume 75. Issue 3. Article 15. “Antitrust, Deregulation, and the Newly Liberated Marketplace”.

On this view, antitrust is not another form of regulation. Antitrustis an alternative to regulation and, where feasible, a better alternative.3To be more specific, the classicist first looks to the marketplace to protectthe consumer; he relies upon the antitrust laws to sustain market compe-tition. He turns to regulation only where free markets policed by anti-trust laws will not work-where he finds significant market "defects"that antitrust laws cannot cure. Only then is it worth gearing up thecumbersome, highly imperfect bureaucratic apparatus of classical regula-tion. Regulation is viewed as a substitute for competition, to be usedonly as a weapon of last resort-as a heroic cure reserved for a seriousdisease.

#### 4---It is a jurisdictional question---antitrust authorities don’t intervene in regulatory concerns

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As argued in this Article, the recent Comcast decision should not be dismissed as an inconvenient hurdle to be sidestepped by reclassification; rather it marks a pivotal invitation to Congress to redefine the boundaries between the FCC and antitrust authorities. In the long wake of assorted jurisdictional tugs of war between the two regimes, and amidst a legacy of accusations of regulatory capture and administrative overreach,29 the net neutrality debate accentuates historic preferences for antitrust versus regulation, a subject which should be revisited and squarely addressed. Before that can be done, however, the rules of the road—the issue of jurisdiction—must be clearly decided.

The analysis of the relevant jurisdiction is broken into two rival camps: (1) regulatory jurisdiction and (2) antitrust jurisdiction. The first camp, regulatory jurisdiction, the more complex of the two, is further divided into two subparts of particular concern (a) legacy-based regulation and (b) “satellite jurisdiction.” The first subpart of regulatory jurisdiction, legacy-based regulation, refers to the FCC’s congressionally designated core industry. The concern with legacy-based regulation is that the FCC will engage in procedural opportunism: that is, the agency may exploit the service classification process to extend its own regulatory authority.

## Case

#### That’s offense---their grand historical metanarrative devolves into a form of Manichaeism that homogenizes indigenous populations

Pappas, 17—Associate Professor of Philosophy at Texas A& M University (Gregory Fernando, not Alexander Diamond, Michigan/GBN debate and baseball superstar, “The Limitations and Dangers of Decolonial Philosophies: Lessons from Zapatista Luis Villoro,” Radical Philosophy Review, March 31, 2017, dml) [ableist language modifications denoted by brackets]

What is now termed the decolonial turn or project is part of the critical liberation thought in Latin America that has continued to rectify its own blinders that come from European bias. For instance, the social-historical reality in Latin America is such that injustices cannot simply be analyzed in terms of class. The new categories such as “coloniality”4 or “Western hegemonic modernity”5 were needed to better capture the injustices that are the legacy of colonialism in other realms of social life that are not just narrowly political, e.g., knowledge.6 While these last categories predominate in the analysis of decolonial theorists, it is important to not homogenize a movement that is in process of development centered on overlapping beliefs and methodologies.7 There is, however, some consensus that in the Americas there has been a “decolonial turn”8 in philosophy and that it is proper to characterize the thought or approach of such philosophers as Enrique Dussel, Anibal Quijano, Walter Mignolo, Nelson Maldonado-Torres, and Ramon Grosfugel as “decolonialists” or as being centered on some form of “decolonialism.” I do not here attempt a full genealogy and description of this turn or project; it will be enough for my purpose to examine the most broad and common assumptions in how they approach problems of injustice.9

Decolonialists overlap in some of their assumptions, including some general categories as their favorite tools of analysis, and in their general approach to the problems of injustice in the Americas. In spite of their differences, most of them definitely share a sense of what the central problem is and the direction in which we should seek a possible solution. Maldonado admits as much: “The decolonial turn does not refer to a single theoretical school, but rather points to a family of diverse positions that share a view of coloniality as a fundamental problem in the modern (as well as postmodern and information) age, and of decolonization or decoloniality as a necessary task that remains unfinished.”10 Decolonialists see themselves as taking the theme of “decolonization”—the new synonym of “liberation”—into far-reaching and systematic critiques of European and U.S. dominance, and modernity-liberalism, conceived as colonial ideologies that have concealed Latin American voices. They see recent widespread decolonial indigenous movements as evidence that their approach has current relevance and a future.11

Decolonial thought is a significant improvement over the previous Left in the Americas, but is it immune from similar mistakes or the excesses that concerned Villoro about the old Left? I argue that they are vulnerable to the same vices insofar as they share the following common features: (1) starting with a theoretical global standpoint and a grand historical metanarrative about injustice, (2) an inflated notion of what counts as ideology and theoretical barometers of good and evil, (3) centering the project of liberation on shared beliefs or ideas, and (4) adopting or “using” indigenous thought and “speaking for” the oppressed. The following sections consider why each of these features raises the possibility of different limitations and dangers, including the risks of oversimplification, ~~blindness~~ [ignorance], reductionism, dogmatism, and corruption. In each case, I show where Villoro and his decolonial contemporaries stand together and where they go separate ways. Of the four dangers presented, only the last is my own addition that, while consonant with Villoro’s view, is not explicitly stated in his work.

#### 2---Distinguishing types of violence is necessary to better understand its causes---doing so is not "omission," but good social science.

Charles Tilly 03. Professor of Political Science at Columbia. The Politics of Collective Violence. Cambridge University Press. 4-5.

What about nonviolent violence? Questions of injustice, exploitation, and oppression unquestionably arise across a wide variety of collective violence. What is more, physical seizure or damage often occurs as a contingent outcome of conflicts that greatly resemble each other, many of which proceed without direct short-term damage. Nevertheless, **to spread the term “violence” across all interpersonal relations and solitary actions of which we disapprove actually undermines the effort to explain violence** (for a contrary view, see Weigert 1999). **It blocks us from asking about effective causal relationships between exploitation or injustice, on one side, and physical damage, on the other.** It also obscures the fact that specialists in inflicting physical damage (such as police, soldiers, guards, thugs, and gangs) play significant parts in collective violence. Their presence or absence often makes all the difference between violent and nonviolent outcomes. (edited)

#### 3---Extinction threats are real and outweigh---it’s the upmost moral evil and disavowal of the risk makes it more likely.

Burns 17 (Elizabeth Finneron-Burns is a Teaching Fellow at the University of Warwick and an Affiliated Researcher at the Institute for Futures Studies in Stockholm, What’s wrong with human extinction?, <http://www.tandfonline.com/doi/pdf/10.1080/00455091.2016.1278150?needAccess=true>, Canadian Journal of Philosophy, 2017)

Many, though certainly not all, people might believe that it would be wrong to bring about the end of the human species, and the reasons given for this belief are various. I begin by considering four reasons that could be given against the moral permissibility of human extinction. I will argue that only those reasons that impact the people who exist at the time that the extinction or the knowledge of the upcoming extinction occurs, can explain its wrongness. I use this conclusion to then consider in which cases human extinction would be morally permissible or impermissible, arguing that there is only a small class of cases in which it would not be wrong to cause the extinction of the human race or allow it to happen. 2.1. It would prevent the existence of very many happy people One reason of human extinction might be considered to be wrong lies in the value of human life itself. The thought here might be that it is a good thing for people to exist and enjoy happy lives and extinction would deprive more people of enjoying this good. The ‘good’ in this case could be understood in at least two ways. According to the first, one might believe that you benefit a person by bringing them into existence, or at least, that it is good for that person that they come to exist. The second view might hold that if humans were to go extinct, the utility foregone by the billions (or more) of people who could have lived but will now never get that opportunity, renders allowing human extinction to take place an incidence of wrongdoing. An example of this view can be found in two quotes from an Effective Altruism blog post by Peter Singer, Nick Beckstead and Matt Wage: One very bad thing about human extinction would be that billions of people would likely die painful deaths. But in our view, this is by far not the worst thing about human extinction. The worst thing about human extinction is that there would be no future generations. Since there could be so many generations in our future, the value of all those generations together greatly exceeds the value of the current generation. (Beckstead, Singer, and Wage 2013) The authors are making two claims. The first is that there is value in human life and also something valuable about creating future people which gives us a reason to do so; furthermore, it would be a very bad thing if we did not do so. The second is that, not only would it be a bad thing for there to be no future people, but it would actually be the worst thing about extinction. Since happy human lives have value, and the number of potential people who could ever exist is far greater than the number of people who exist at any one time, even if the extinction were brought about through the painful deaths of currently existing people, the former’s loss would be greater than the latter’s. Both claims are assuming that there is an intrinsic value in the existence of potential human life. The second claim makes the further assumption that the forgone value of the potential lives that could be lived is greater than the disvalue that would be accrued by people existing at the time of the extinction through suffering from painful and/or premature deaths. The best-known author of the post, Peter Singer is a prominent utilitarian, so it is not surprising that he would lament the potential lack of future human lives per se. However, it is not just utilitarians who share this view, even if implicitly. Indeed, other philosophers also seem to imply that they share the intuition that there is just something wrong with causing or failing to prevent the extinction of the human species such that we prevent more ‘people’ from having the ‘opportunity to exist’. Stephen Gardiner (2009) and Martin O’Neill (personal correspondence), both sympathetic to contract theory, for example, also find it intuitive that we should want more generations to have the opportunity to exist, assuming that they have worth-living lives, and I find it plausible to think that many other people (philosophers and non-philosophers alike) probably share this intuition. When we talk about future lives being ‘prevented’, we are saying that a possible person or a set of possible people who could potentially have existed will now never actually come to exist. To say that it is wrong to prevent people from existing could either mean that a possible person could reasonably reject a principle that permitted us not to create them, or that the foregone value of their lives provides a reason for rejecting any principle that permits extinction. To make the first claim we would have to argue that a possible person could reasonably reject any principle that prevented their existence on the grounds that it prevented them in particular from existing. However, this is implausible for two reasons. First, we can only wrong someone who did, does or will actually exist because wronging involves failing to take a person’s interests into account. When considering the permissibility of a principle allowing us not to create Person X, we cannot take X’s interest in being created into account because X will not exist if we follow the principle. By considering the standpoint of a person in our deliberations we consider the burdens they will have to bear as a result of the principle. In this case, there is no one who will bear any burdens since if the principle is followed (that is, if we do not create X), X will not exist to bear any burdens. So, only people who do/will actually exist can bear the brunt of a principle, and therefore occupy a standpoint that is owed justification. Second, existence is not an interest at all and a possible person is not disadvantaged by not being caused to exist. Rather than being an interest, it is a necessary requirement in order to have interests. Rivka Weinberg describes it as ‘neutral’ because causing a person to exist is to create a subject who can have interests; existence is not an interest itself.3 In order to be disadvantaged, there must be some detrimental effect on your interests. However, without existence, a person does not have any interests so they cannot be disadvantaged by being kept out of existence. But, as Weinberg points out, ‘never having interests itself could not be contrary to people’s interests since without interest bearers, there can be no ‘they’ for it to be bad for’ (Weinberg 2008, 13). So, a principle that results in some possible people never becoming actual does not impose any costs on those ‘people’ because nobody is disadvantaged by not coming into existence.4 It therefore seems that it cannot be wrong to fail to bring particular people into existence. This would mean that no one acts wrongly when they fail to create another person. Writ large, it would also not be wrong if everybody decided to exercise their prerogative not to create new people and potentially, by consequence, allow human extinction. One might respond here by saying that although it may be permissible for one person to fail to create a new person, it is not permissible if everyone chooses to do so because human lives have value and allowing human extinction would be to forgo a huge amount of value in the world. This takes us to the second way of understanding the potential wrongness of preventing people from existing — the foregone value of a life provides a reason for rejecting any principle that prevents it. One possible reply to this claim turns on the fact that many philosophers acknowledge that the only, or at least the best, way to think about the value of (individual or groups of) possible people’s lives is in impersonal terms (Parfit 1984; Reiman 2007; McMahan 2009). Jeff McMahan, for example, writes ‘at the time of one’s choice there is no one who exists or will exist independently of that choice for whose sake one could be acting in causing him or her to exist … it seems therefore that any reason to cause or not to cause an individual to exist … is best considered an impersonal rather than individual-affecting reason’ (McMahan 2009, 52). Another reply along similar lines would be to appeal to the value that is lost or at least foregone when we fail to bring into existence a next (or several next) generations of people with worth-living lives. Since ex hypothesi worth-living lives have positive value, it is better to create more such lives and worse to create fewer. Human extinction by definition is the creation of no future lives and would ‘deprive’ billions of ‘people’ of the opportunity to live worth-living lives. This might reduce the amount of value in the world at the time of the extinction (by killing already existing people), but it would also prevent a much vaster amount of value in the future (by failing to create more people). Both replies depend on the impersonal value of human life. However, recall that in contractualism impersonal values are not on their own grounds for reasonably rejecting principles. Scanlon himself says that although we have a strong reason not to destroy existing human lives, this reason ‘does not flow from the thought that it is a good thing for there to be more human life rather than less’ (104). In contractualism, something cannot be wrong unless there is an impact on a person. Thus, neither the impersonal value of creating a particular person nor the impersonal value of human life writ large could on its own provide a reason for rejecting a principle permitting human extinction. It seems therefore that the fact that extinction would deprive future people of the opportunity to live worth-living lives (either by failing to create either particular future people or future people in general) cannot provide us with a reason to consider human extinction to be wrong. Although the lost value of these ‘lives’ itself cannot be the reason explaining the wrongness of extinction, it is possible the knowledge of this loss might create a personal reason for some existing people. I will consider this possibility later on in section (d). But first I move to the second reason human extinction might be wrong per se. 2.2. It would mean the loss of the only known form of intelligent life and all civilization and intellectual progress would be lost A second reason we might think it would be wrong to cause human extinction is the loss that would occur of the only (known) form of rational life and the knowledge and civilization that that form of life has created. One thought here could be that just as some might consider it wrong to destroy an individual human heritage monument like the Sphinx, it would also be wrong if the advances made by humans over the past few millennia were lost or prevented from progressing. A related argument is made by those who feel that there is something special about humans’ capacity for rationality which is valuable in itself. Since humans are the only intelligent life that we know of, it would be a loss, in itself, to the world for that to end. I admit that I struggle to fully appreciate this thought. It seems to me that Henry Sidgwick was correct in thinking that these things are only important insofar as they are important to humans (Sidgwick 1874, I.IX.4).5 If there is no form of intelligent life in the future, who would there be to lament its loss since intelligent life is the only form of life capable of appreciating intelligence? Similarly, if there is no one with the rational capacity to appreciate historic monuments and civil progress, who would there be to be negatively affected or even notice the loss?6 However, even if there is nothing special about human rationality, just as some people try to prevent the extinction of nonhuman animal species, we might think that we ought also to prevent human extinction for the sake of biodiversity. The thought in this, as well as the earlier examples, must be that it would somehow be bad for the world if there were no more humans even though there would be no one for whom it is bad. This may be so but the only way to understand this reason is impersonally. Since we are concerned with wrongness rather than badness, we must ask whether something that impacts no one’s well-being, status or claims can be wrong. As we saw earlier, in the contractualist framework reasons must be personal rather than impersonal in order to provide grounds for reasonable rejection (Scanlon 1998, 218–223). Since the loss of civilization, intelligent life or biodiversity are per se impersonal reasons, there is no standpoint from which these reasons could be used to reasonably reject a principle that permitted extinction. Therefore, causing human extinction on the grounds of the loss of civilization, rational life or biodiversity would not be wrong. 2.3. Existing people would endure physical pain and/or painful and/or premature deaths Thinking about the ways in which human extinction might come about brings to the fore two more reasons it might be wrong. It could, for example, occur if all humans (or at least the critical number needed to be unable to replenish the population, leading to eventual extinction) underwent a sterilization procedure. Or perhaps it could come about due to anthropogenic climate change or a massive asteroid hitting the Earth and wiping out the species in the same way it did the dinosaurs millions of years ago. Each of these scenarios would involve significant physical and/or non-physical harms to existing people and their interests. Physically, people might suffer premature and possibly also painful deaths, for example. It is not hard to imagine examples in which the process of extinction could cause premature death. A nuclear winter that killed everyone or even just every woman under the age of 50 is a clear example of such a case. Obviously, some types of premature death themselves cannot be reasons to reject a principle. Every person dies eventually, sometimes earlier than the standard expected lifespan due to accidents or causes like spontaneously occurring incurable cancers. A cause such as disease is not a moral agent and therefore it cannot be wrong if it unavoidably kills a person prematurely. Scanlon says that the fact that a principle would reduce a person’s well-being gives that person a reason to reject the principle: ‘components of well-being figure prominently as grounds for reasonable rejection’ (Scanlon 1998, 214). However, it is not settled yet whether premature death is a setback to well-being. Some philosophers hold that death is a harm to the person who dies, whilst others argue that it is not.7 I will argue, however, that regardless of who is correct in that debate, being caused to die prematurely can be reason to reject a principle when it fails to show respect to the person as a rational agent. Scanlon says that recognizing others as rational beings with interests involves seeing reason to preserve life and prevent death: ‘appreciating the value of human life is primarily a matter of seeing human lives as something to be respected, where this involves seeing reasons not to destroy them, reasons to protect them, and reasons to want them to go well’ (Scanlon 1998, 104). The ‘respect for life’ in this case is a respect for the person living, not respect for human life in the abstract. This means that we can sometimes fail to protect human life without acting wrongfully if we still respect the person living. Scanlon gives the example of a person who faces a life of unending and extreme pain such that she wishes to end it by committing suicide. Scanlon does not think that the suicidal person shows a lack of respect for her own life by seeking to end it because the person whose life it is has no reason to want it to go on. This is important to note because it emphasizes the fact that the respect for human life is person-affecting. It is not wrong to murder because of the impersonal disvalue of death in general, but because taking someone’s life without their permission shows disrespect to that person. This supports its inclusion as a reason in the contractualist formula, regardless of what side ends up winning the ‘is death a harm?’ debate because even if death turns out not to harm the person who died, ending their life without their consent shows disrespect to that person. A person who could reject a principle permitting another to cause his or her premature death presumably does not wish to die at that time, or in that manner. Thus, if they are killed without their consent, their interests have not been taken into account, and they have a reason to reject the principle that allowed their premature death.8 This is as true in the case of death due to extinction as it is for death due to murder. However, physical pain may also be caused to existing people without killing them, but still resulting in human extinction. Imagine, for example, surgically removing everyone’s reproductive organs in order to prevent the creation of any future people. Another example could be a nuclear bomb that did not kill anyone, but did painfully render them infertile through illness or injury. These would be cases in which physical pain (through surgery or bombs) was inflicted on existing people and the extinction came about as a result of the painful incident rather than through death. Furthermore, one could imagine a situation in which a bomb (for example) killed enough people to cause extinction, but some people remained alive, but in terrible pain from injuries. It seems uncontroversial that the infliction of physical pain could be a reason to reject a principle. Although Scanlon says that an impact on well-being is not the only reason to reject principles, it plays a significant role, and indeed, most principles are likely to be rejected due to a negative impact on a person’s well-being, physical or otherwise. It may be queried here whether it is actually the involuntariness of the pain that is grounds for reasonable rejection rather than the physical pain itself because not all pain that a person suffers is involuntary. One can imagine acts that can cause physical pain that are not rejectable — base jumping or life-saving or improving surgery, for example. On the other hand, pushing someone off a cliff or cutting him with a scalpel against his will are clearly rejectable acts. The difference between the two cases is that in the former, the person having the pain inflicted has consented to that pain or risk of pain. My view is that they cannot be separated in these cases and it is involuntary physical pain that is the grounds for reasonable rejection. Thus, the fact that a principle would allow unwanted physical harm gives a person who would be subjected to that harm a reason to reject the principle. Of course the mere fact that a principle causes involuntary physical harm or premature death is not sufficient to declare that the principle is rejectable — there might be countervailing reasons. In the case of extinction, what countervailing reasons might be offered in favour of the involuntary physical pain/ death-inducing harm? One such reason that might be offered is that humans are a harm to the natural environment and that the world might be a better place if there were no humans in it. It could be that humans might rightfully be considered an all-things-considered hindrance to the world rather than a benefit to it given the fact that we have been largely responsible for the extinction of many species, pollution and, most recently, climate change which have all negatively affected the natural environment in ways we are only just beginning to understand. Thus, the fact that human extinction would improve the natural environment (or at least prevent it from degrading further), is a countervailing reason in favour of extinction to be weighed against the reasons held by humans who would experience physical pain or premature death. However, the good of the environment as described above is by definition not a personal reason. Just like the loss of rational life and civilization, therefore, it cannot be a reason on its own when determining what is wrong and countervail the strong personal reasons to avoid pain/death that is held by the people who would suffer from it.9 Every person existing at the time of the extinction would have a reason to reject that principle on the grounds of the physical pain they are being forced to endure against their will that could not be countervailed by impersonal considerations such as the negative impact humans may have on the earth. Therefore, a principle that permitted extinction to be accomplished in a way that caused involuntary physical pain or premature death could quite clearly be rejectable by existing people with no relevant countervailing reasons. This means that human extinction that came about in this way would be wrong. There are of course also additional reasons they could reject a similar principle which I now turn to address in the next section. 2.4. Existing people could endure non-physical harms I said earlier than the fact in itself that there would not be any future people is an impersonal reason and can therefore not be a reason to reject a principle permitting extinction. However, this impersonal reason could give rise to a personal reason that is admissible. So, the final important reason people might think that human extinction would be wrong is that there could be various deleterious psychological effects that would be endured by existing people having the knowledge that there would be no future generations. There are two main sources of this trauma, both arising from the knowledge that there will be no more people. The first relates to individual people and the undesired negative effect on well-being that would be experienced by those who would have wanted to have children. Whilst this is by no means universal, it is fair to say that a good proportion of people feel a strong pull towards reproduction and having their lineage continue in some way. Samuel Scheffler describes the pull towards reproduction as a ‘desire for a personalized relationship with the future’ (Scheffler 2012, 31). Reproducing is a widely held desire and the joys of parenthood are ones that many people wish to experience. For these people knowing that they would not have descendants (or that their descendants will endure painful and/or premature deaths) could create a sense of despair and pointlessness of life. Furthermore, the inability to reproduce and have your own children because of a principle/policy that prevents you (either through bans or physical interventions) would be a significant infringement of what we consider to be a basic right to control what happens to your body. For these reasons, knowing that you will have no descendants could cause significant psychological traumas or harms even if there were no associated physical harm. The second is a more general, higher level sense of hopelessness or despair that there will be no more humans and that your projects will end with you. Even those who did not feel a strong desire to procreate themselves might feel a sense of hopelessness that any projects or goals they have for the future would not be fulfilled. Many of the projects and goals we work towards during our lifetime are also at least partly future-oriented. Why bother continuing the search for a cure for cancer if either it will not be found within humans’ lifetime, and/or there will be no future people to benefit from it once it is found? Similar projects and goals that might lose their meaning when confronted with extinction include politics, artistic pursuits and even the type of philosophical work with which this paper is concerned. Even more extreme, through the words of the character Theo Faron, P.D. James says in his novel The Children of Men that ‘without the hope of posterity for our race if not for ourselves, without the assurance that we being dead yet live, all pleasures of the mind and senses sometimes seem to me no more than pathetic and crumbling defences shored up against our ruins’ (James 2006, 9). Even if James’ claim is a bit hyperbolic and all pleasures would not actually be lost, I agree with Scheffler in finding it not implausible that the knowledge that extinction was coming and that there would be no more people would have at least a general depressive effect on people’s motivation and confidence in the value of and joy in their activities (Scheffler 2012, 43). Both sources of psychological harm are personal reasons to reject a principle that permitted human extinction. Existing people could therefore reasonably reject the principle for either of these reasons. Psychological pain and the inability to pursue your personal projects, goals, and aims, are all acceptable reasons for rejecting principles in the contractualist framework. So too are infringements of rights and entitlements that we accept as important for people’s lives. These psychological reasons, then, are also valid reasons to reject principles that permitted or required human extinction.

#### Big ag key to feed the growing population

Michelle Miller, 18. Iowa-based farmer, public speaker and writer, who lives and works on a farm which consists of row crops, beef cattle, and sheep. “Farm Babe: In defense of ‘factory’ farming and ‘industrial, big ag’” February 27, 2018. https://www.agdaily.com/insights/farm-babe-in-defense-of-factory-farming-and-industrial-big-ag/

We’ve all probably heard the stories. Perhaps you’ve heard that factory farming is a way for big corporations that greedily care only about profits to control animals in awful conditions. The animals are “pumped full” of antibiotics and hormones, or they’re kept in sick and crowded quarters, right? Maybe you’ve heard “big ag” doesn’t care about the environment and soil health and that industrial agriculture is responsible for catastrophes where “industrial” sounds like sad, gray, dreary, and faceless arenas full of machines. These myths and words or terms cannot be defined. They pull at our heartstrings but don’t hold much in terms of scientific facts, and they affect something all near and dear to us: food. We all want to feel connected to our food in some way, but how many of the emotions we feel hold merit? I used to buy into all this terminology. I tried to buy from small, local farmers whenever possible and paid extra for labels that I thought would really make a beneficial impact. I still do buy local and am a farmers market vendor in my area, but when it comes to grocery stores, I no longer feel the need to buy the most expensive product as it doesn’t always mean higher quality or better. So what changed? Well, in my opinion it seems as though people fear what they don’t understand. How many of us have been inside a so-called “factory” farm? How many of us even know a large-scale farmer or have ever worked with butchers or USDA inspectors behind the scenes? I have, throughout my years as a farmer and writer. And let me tell you, what I’ve seen has been absolutely amazing and incredible. It has completely changed my perspective on food. Although our family farm is not that big by comparison, it’s been very interesting to see firsthand how far we’ve come in terms of farm improvements, especially from an environmental perspective on larger-scale farms. What I was always expecting before large-scale farm tours was the thoughts that these animals would look sad and not well cared, for but boy have I been proven wrong! Over the years I’ve had tours given by folks with Ph.D.s in animal welfare, poultry science, or dairy science to name a few. There are 24/7 camera monitoring on some farms with on-site veterinarians, robotic millers, or data points to track the health of every cow, for example. Technology has improved every aspect of our lives and food, and farming is no exception. When I think of the term “factory” I think of systems that have been put in place where quality assurance is important. Where teams of people specialize in one arena of expertise to make the best product. A factory is a place with job security that contributes to the economy that depends on research and technology. Farming is a business, and a business cannot grow if it can’t sell a product or it has a product that is low quality. And what about “industrial” agriculture? Well, whether we want to believe it or not, food is an industrial-scale business, just like iPhones aren’t made in our parents’ basement. It requires hard work, intelligent engineers, and research and development. With less than 2 percent of the population of North America as farmers, it can be easy for us to forget just how big of scale we are talking about here. How much do we take for granted in our first world society? Isn’t it incredible that we have access to fresh produce, coffee, meat and dairy, and processed foods with long shelf life, at our fingertips? Affordable and abundant? How lucky are we that we can have all of that at any time? Could you imagine how angry people would be if the grocery stores ran out of bread, milk, lettuce, etc? COFFEE?!? Lord have mercy. This article brings up some excellent points on the benefits of industrial agriculture from the perspective of Jayson Lusk, ag economist at Oklahoma State University. Economies of scale have their advantages, like the ability to afford the latest technologies, equipment, drones, precision ag and data monitoring. They can afford third-party certifications and hire the best employees. Farmers today are able to produce so much more crop with less land and less natural resources. These are all benefits that should be celebrated as we grow to a population of nearly 9 billion people. It’s not to say it will ever be perfect, but check out this article with the data points that should be driven home before judging. Go see it with your own two eyes and learn from the people who do it every day in 2018. You’ll be pleasantly surprised at how far we’ve come and continue to progress.

#### Bio-d loss isn’t existential

Kareiva and Carranza, 18—Institute of the Environment and Sustainability, University of California, Los Angeles (Peter and Valerie, “Existential risk due to ecosystem collapse: Nature strikes back,” Futures, available online January 5, 2018, ScienceDirect, dml)

The interesting question is whether any of the planetary thresholds other than CO2 could also portend existential risks. Here the answer is not clear. One boundary often mentioned as a concern for the fate of global civilization is biodiversity (Ehrlich & Ehrlich, 2012), with the proposed safety threshold being a loss of greater than 0.001% per year (Rockström et al., 2009). There is little evidence that this particular 0.001% annual loss is a threshold—and it is hard to imagine any data that would allow one to identify where the threshold was (Brook, Ellis, Perring, Mackay, & Blomqvist, 2013; Lenton & Williams, 2013). A better question is whether one can imagine any scenario by which the loss of too many species leads to the collapse of societies and environmental disasters, even though one cannot know the absolute number of extinctions that would be required to create this dystopia. While there are data that relate local reductions in species richness to altered ecosystem function, these results do not point to substantial existential risks. The data are small-scale experiments in which plant productivity, or nutrient retention is reduced as species numbers decline locally (Vellend, 2017), or are local observations of increased variability in fisheries yield when stock diversity is lost (Schindler et al., 2010). Those are not existential risks. To make the link even more tenuous, there is little evidence that biodiversity is even declining at local scales (Vellend et al., 2013, 2017). Total planetary biodiversity may be in decline, but local and regional biodiversity is often staying the same because species from elsewhere replace local losses, albeit homogenizing the world in the process. Although the majority of conservation scientists are likely to flinch at this conclusion, there is growing skepticism regarding the strength of evidence linking trends in biodiversity loss to an existential risk for humans (Maier, 2012; Vellend, 2014). Obviously if all biodiversity disappeared civilization would end—but no one is forecasting the loss of all species. It seems plausible that the loss of 90% of the world’s species could also be apocalyptic, but not one is predicting that degree of biodiversity loss either. Tragic, but plausible is the possibility of our planet suffering a loss of as many as half of its species. If global biodiversity were halved, but at the same time locally the number of species stayed relatively stable, what would be the mechanism for an end-of-civilization or even end of human prosperity scenario? Extinctions and biodiversity loss are ethical and spiritual losses, but perhaps not an existential risk.

# 1NR

## Japan DA

#### Sovereignty fights---US application of antitrust create friction with Japan.

Melissa Ginsberg 14. Patterson Belknap Webb & Tyler LLP. "Belgium, Japan to 7th Circuit: Don’t interfere with our antitrust enforcement!". JD Supra. 10-17-2014. https://www.jdsupra.com/legalnews/belgium-japan-to-7th-circuit-dont-int-47666/

The Ministry of Economy, Trade and Industry of Japan also opposes the assertion of extraterritorial jurisdiction that would interfere with its sovereign authority. Japan argues that “in civil lawsuits based on injuries alleged to have been incurred as a result of foreign anti-competitive activities, plaintiffs often tend to insist on the remarkably enlarged scope of extraterritorial application.” In particular, Japan notes that its laws do not provide for treble damages awards in antitrust claims. Japan is thus concerned that the applicability of treble damages will be expanded through extraterritorial application of U.S. competition law, interfering with Japan’s ability to regulate its own markets.

In a March 27, 2014 decision, the Seventh Circuit expressed concern that an “expansive interpretation” of the FTAIA could “creat[e] friction with many foreign countries[.]” Although that decision has since been vacated, it remains likely that the Seventh Circuit will consider the views expressed by foreign jurisdictions.

#### here’s a specific link---japan has seed patents!

Hitomi Iwase, Yoko Kasai and Satoshi Yumura 20. \*\*Partners at Nishimura & Asahi specializing in the areas of IP (intellectual property), IT (information technology) and data privacy. “Intellectual Property Transactions in Japan: Overview.” November 1 2020. https://uk.practicallaw.thomsonreuters.com/9-501-5662?transitionType=Default&contextData=(sc.Default)&firstPage=true

New plant varieties can be registered and protected under the Plant Variety Protection and Seed Act (plant breeder's right) if they can both:

Be distinguished from any other plant variety by at least one of their important characteristics.

Be propagated while maintaining all their expressions of characteristics without change.

#### 4- \*Extraterritorial antitrust fractures diplomacy---kills relations with allies.

S. Nathan Park 17. Career in Law Teaching Fellow, Columbia Law School; Adjunct Professor of Law, Georgetown Law Center; Of Counsel, Kobre & Kim LLP. “Equity Extraterritoriality”. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1515&context=djcil

2. Strife in Diplomatic Relations

Because Equity Extraterritoriality infringes upon a foreign sovereign’s interest, it frequently causes diplomatic strife. The Argentina bond case, litigated before a New York federal court, provided anti-American fodder to Argentina’s politicians.232 Reporters for the Restatement have noted the level of friction and acrimony caused by extraterritorial discovery orders.233 Extraterritorial orders issued pursuant to U.S. antitrust laws have “provoked the loudest and most consistent foreign protests.”234 Discussing American antitrust laws, a Canadian government official did not mince words: “For one government to seek to resolve the conflict in its favor by invoking its national law before its domestic tribunals is not the rule of law but an application, in judicial guise, of the principle that economic might is right.”235 Foreign governments would file amicus curie briefs objecting to U.S. extraterritoriality, but the U.S. court’s deference to such views is not consistent. The In re Uranium Antitrust Litigation opinion is an example of hostility, in which the Seventh Circuit called the governments of Australia, Canada, South Africa, and the United Kingdom “surrogates” of the foreign corporation defendants who “subversively presented for them their case.”236 The Uranium court’s hostility toward the foreign states prompted the State Department to inform the court that the opinion “has caused serious embarrassment to the United States in its relations with some of our closest allies.”237

It is a significant problem that the unelected judiciary, which is often a state court or a federal court applying state law, is effecting foreign policy consequences. When a court issues an extraterritorial order, it is conducting an indirect type of diplomacy against its constitutional mandate.238 The problem is worse when a state law is involved. Territoriality principles prohibit a state law from being applied beyond state borders, much less beyond U.S. borders.239 Yet under Equity Extraterritoriality, a state law may be applied anywhere in the world, causing diplomatic strife with foreign sovereigns.

#### 4- \*Extraterritorial antitrust shreds commerce and relations.

J. Franck Hogue 16. Recalling First Principles: The Importance of Comity in Avoiding Antitrust Imperialism, 73 Wash. & Lee L. Rev. 533 (2016), https://scholarlycommons.law.wlu.edu/wlulr/vol73/iss1/12

I would add a somewhat less apocalyptic source of conflict that may hamper the operation of global commerce: the overzealous extraterritorial application of antitrust laws. Each of the countries that supplied a part of Mr. Friedman’s computer have their own laws and regulations that govern the conduct of companies doing business within their borders, among them competition laws that delineate what is and what is not permissible.11 These regulations reflect the legal and commercial traditions unique to particular jurisdictions, and embody the differing choices made by these states. And, of course, the United States has its own innumerable laws that govern the conduct of commerce within its own borders.12 These are the product of the U.S. and Western commercial heritage. As to all of the countries, it has long been established in international law that principles of sovereignty permit these nations to apply their laws to conduct occurring within their territory.13 But conflict and friction in the international commercial system can occur when one nation seeks to apply its own laws to conduct that takes place within the borders of another nation.14

---FOOTNOTE 14 STARTS, MID PARAGRAPH---

14. See Brief for Ministry of Economy, Trade and Industry of Japan as Amici Curiae Supporting Appellees 3, Motorola Mobility LLC v. AU Optronics Corp., 775 F.3d 816 (7th Cir. 2015) (No. 14-8003) (“‘[E]xcessive’ extraterritorial application of competition law tends to bring about serious tension between the countries involved.”); Brief for Belgian Competition Authority as Amicus Curiae Supporting Appellee 6, Motorola Mobility, 775 F.3d 816 (No. 14-8003) (“The proliferation of competition law systems can contribute significantly to a better functioning of markets. But without the necessary convergence and comity, conflicting policies may well become a significant obstacle to trade and investment, as recognized by nations across the globe.”).

---FOOTNOTE 14 ENDS, PARAGRAPH RESUMES---

The extraterritorial application of antitrust regulations is a potent example. Conflict is particularly possible when it is American antitrust law that is urged to reach foreign commerce and conduct.15 While such an application can be permissible in certain circumstances, there are constraints on the extraterritorial application of American antitrust laws to alleviate such friction.16 One such constraint, but certainly not the only one, is the Foreign Trade Antitrust Improvements Act (FTAIA).17

While the FTAIA initially enjoyed little celebrity, it has taken on an increased importance in debates over how far and to what conduct American courts should extend the reach of American antitrust law.18 Increasingly, American courts have taken up the proper application of FTAIA to cases involving foreign conduct, foreign commerce, and domestic claims.19 So too has academia, producing a remarkable volume of scholarly research and shining much-needed light on a once-obscure statute.20

It is into this already-crowded field that Ms. Leonard bravely enters with her timely Note, In Need of Direction: An Evaluation of the “Direct Effect” Requirement Under the Foreign Trade Antitrust Improvements Act.21 In her Note, Ms. Leonard seeks to identify the appropriate test to allow the FTAIA to play its proper role in the modern global economy.22 Ms. Leonard focuses her analysis on a single aspect of the analysis with which courts engage when applying the FTAIA, namely the direct effect prong.23 She skillfully dissects and analyzes two differing tests that courts have used in evaluating whether there is a sufficient link between foreign conduct and an alleged harm to domestic American commerce.24 And while Ms. Leonard’s analysis is sound and her ultimate conclusion well-supported, fundamental principles of comity—a first principle when discussing foreign application of a nation’s law—plays only a supporting role in her Note.25

But notions of international comity must not be relegated to such a secondary position. Courts, including the U.S. Supreme Court, have recognized that comity concerns play a prime role as a first principle in determining whether to extend the antitrust laws to foreign conduct.26 Because, as the Court observed, “Why should American law supplant, for example, Canada’s or Great Britain’s or Japan’s own determination about how best to protect Canadian or British or Japanese customers from anticompetitive conduct engaged in significant part by Canadian or British or Japanese or other foreign companies?”27

As other countries have urged, “Greater comity is required in our modern era when international transactions involve a constant flow of products, wealth and people across the globe.”28 Greater comity leaves other countries free to organize their economies and develop their own domestic industries in accordance with the wishes of their own people.29 As the government of Japan has put it, Japan “has significant economic, political, and legal interests in ensuring that companies based in Japan shall comply with the Japanese legal system, and that Japanese companies running businesses elsewhere shall comply with ‘reasonable’ jurisdictional requirements of other nations.”30 The United Kingdom, Ireland, and the Netherlands cited the U.S. Supreme Court to renowned scholar Vaughan Lowe in making the point that a faithful adherence to notions of international comity preserve to each country the ability to conduct its domestic affairs in accordance with that nation’s own norms and priorities.31 An overzealous extraterritorial application of U.S. antitrust laws, and failure to heed comity concerns, risks “fail[ing] to give proper consideration to the legitimate choices those nations have made concerning the regulation of their own commerce and competition in their own industries.”32

#### 5- \*It collapses relations---offends other governments---they’ll react with hostility

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The rampant extraterritorial application of U.S. laws has ruffled the feathers of foreign governments for a long time, beginning essentially with the cluster of private and government actions in the Uranium cartel cases back in the 1970’s and 1980’s. Close American allies, including Australia, Canada, France, South Africa, the UK, and others, reacted with hostility to the extraterritorial activism of the domestic judiciary by enacting “blocking” and “claw back” legislation.20 Such reactions included the enactment of laws by the United Kingdom and Canada that prohibit enforcement of foreign judgments awarding multiple damages21 and laws passed by the United Kingdom, France, Australia, and the Canadian provinces of Quebec and Ontario that limit or prohibit the removal of documents in response to a foreign order.22

More recently, a number of governments have expressed their concerns about the application of U.S. laws abroad through amicus briefs, including Australia, Belgium, Canada, China, France, Germany, Japan, the Netherlands, South Korea, Switzerland, Taiwan, and the United Kingdom:23 most of the United States’ top fifteen trading partners.

These foreign governments have expressed a fairly wide variety of concerns about the potential for extraterritorial application of U.S. laws to interfere with those governments’ policy decisions on such matters as liability, procedure, and damages. While most governments have regulatory regimes in place to police, for example, securities fraud and cartel behavior, these differ in many regards both from the American approach and also from each other, reflecting different cultural, social, and economic factors. These differences include the required showing for liability (e.g., definition of materiality in securities fraud cases),24 procedural protections (e.g., class-action formation and cost-shifting provisions),25 and the availability of multiple (i.e., punitive) damages.26 Applying U.S. law to actors, conduct, and effects appropriately considered under a set of foreign laws undermines a foreign government’s ability to govern its own domain and, in the end, becomes an affront to its sovereignty.

Stepping on the toes of foreign governments’ regulatory regimes also risks stymying the international development of policies and regulations beneficial to the United States. Countries without well-developed regulatory apparatuses are less likely to develop them if the behavior is already policed by private plaintiffs in the United States or if the apparatuses would see their policy choices effectively overruled by U.S. policies.27

Foreign governments have also taken the view that extraterritorial application of treble damages threatens to undermine their own enforcement efforts. For example, they claim availability of private treble damages in the United States against their national companies for local conduct may have a detrimental effect on foreign leniency programs. These programs are a key tool for them in rooting out cartel activity, which has traditionally proven difficult to detect and prosecute.28 “These leniency policies seek to balance the interests of disclosure, deterrence, and punishment,” but “disclosure and reform are greatly hindered when a company risks the imposition of treble damages in a U.S. court for confessing to another nation or authority that it has participated in an international conspiracy.”29 When that reach is expanded outside of U.S. consumers in a U.S. court, “the prospect of ruinous civil liability in U.S. courts far outweighs the benefits most companies would receive from participating in an amnesty program.”30 And as Germany and Belgium informed the Supreme Court in Empagran,31 “[h]istorically, other nations have bristled at extraterritorial applications of United States antitrust laws. These concerns have resulted in foreign governments taking a number of measures to counter what they perceive to be an illegitimate encroachment into their sovereignty.”32

The enforcement of American law against foreign enterprises for their foreign conduct has become increasingly contentious and offensive, especially quite recently. The displeasure of the PRC seems particularly acute. In the Vitamin C litigation, a substantial treble damage jury verdict was entered against companies chartered by the PRC for their involvement in an export price-fixing cartel that the PRC itself claimed was conduct directed by a foreign sovereign in order to assure compliance with U.S. antidumping laws. The District Court rejected the interpretation of Chinese law advanced by the PRC and held that, under Rule 44.1 of the Federal Rules of Civil Procedure, the construction of foreign law was a factual matter for the court itself and that only “some degree of deference” was owed to the foreign sovereign’s statement as to the meaning of its own law.33 The case is now on appeal to the Second Circuit, where the PRC, through its Ministry of Foreign Commerce (MOFCOM), has filed a strong amicus brief expressing the view that the district court’s dismissive attitude towards the foreign sovereign’s explanation of its own law was “profoundly disrespectful and wholly unfounded.” The brief further stated that “the district court’s approach and result have deeply troubled the Chinese government, which has sent a diplomatic note concerning this case to the U.S. State Department.”34

#### 6- \*Japan hates US extraterritorial application---assumes Japanese extraterritorial issues of the AMA

Thanh Cong Phan 18. PhD Diss. Master of Laws, Nagoya University, 2013. Bachelor of Laws, Hanoi Law University, 2004. “Competition Law and the Possibility of Private Transnational Governance”. https://dspace.library.uvic.ca/bitstream/handle/1828/10033/Thanh\_Phan\_PhD\_2018.pdf?sequence=1&isAllowed=y

In contrast to its willingness to apply the AMA to anticompetitive conduct abroad, the Japanese government does not recognize the exercise of foreign competition law in Japan. On 18 November 1996 in United States of America v. Nippon Paper Industries Co., the government of Japan filed a brief in the U.S. Court of Appeal for the First Circuit in which it asserted that, following principles of international law, “anticompetitive activities occurring within Japanese territory by Japanese corporations fall primarily under the scope of Japanese jurisdiction and are regulated by Japanese legislation.”280 The Japanese government continued that the application American antitrust laws to such activities would be invalid “in the absence of a substantial link between the activities and the source of jurisdiction.”281 The Japanese government also argued that “[o]ne nation’s unilateral adjudication or extraterritorial application of its national laws is not, however, an appropriate means of resolving international differences.”282 The government of Japan urged the court to hold that U.S. courts should not exercise American jurisdiction over business activities conducted in Japan by Japanese companies.283

The government of Japan made the same argument in 2004 in F. Hoffman-La Roche v. Empagran S.A.284 In that case, the Japanese government submitted an amicus curiae brief in support of petitioners to the Court of Appeal for the District of Columbia Circuit.285 The Japanese government argued that the FTAIA sought to clarify the limits of U.S. antitrust jurisdiction in U.S. foreign commerce, not expand that jurisdiction.286 The brief cited the statement of the U.S. Congress that “[t]he clarified reach of our own laws could encourage our trading partners to take more effective steps to protect competition in their markets under their competition laws.”287 The government of Japan asserted that nothing in the FTAIA’s legislative history suggests that it was intended to expand American antitrust jurisdiction to foreign firms in foreign markets and if the legislature had intended such an expansion, “there would have been a storm of criticism by foreign governments.”288

In sum, Japan’s approach to the extraterritorial application of competition law is inconsistent. On the one hand, the JFTC has applied the AMA extraterritorially, apparently based on an effects doctrine, but it fails to provide a clear limit on the AMA’s extraterritorial jurisdiction. On the other hand, the Japanese government strongly opposes the extraterritorial application of foreign competition law to transactions conducted by Japanese corporations in Japan. These conflicting views suggest that Japan has a double standard when it comes to the extraterritorial application of competition law.

#### 7- Narrowly defined core antitrust is uncontroversial---only the plan’s expansion offends allies.

Herbert Hovenkamp 03. Ben V. & Dorothy Willie Professor of Law and History, University of Iowa. “Antitrust as Extraterritorial Regulatory Policy,” 48 Antitrust BULL. 629 (2003).

V. Conclusion

Within competition policy worldwide, a great deal of consensus exists about such practices as price fixing and other naked agreements in markets that we generally consider to be competitive, or unregulated. In the presence of that consensus, using national court systems to reach activities outside national boundaries is increasingly uncontroversial, unlikely to cause a great deal of harm, and often does much good. Indeed, importing nations typically have a greater incentive than exporting nations to apply their law to cartel agreements causing monopoly prices. The same thing can be said of a very small number of unilateral practices, such as improper intellectual property (IP) infringement actions or other abuses of IP rights, particularly when there is international consensus about the scope of these rights.

But when one moves away from these core concerns of competition policy, consensus breaks down to a very significant extent. A unique combination of antitrust jurisdictional doctrines then operate so as to impose the highly general United States antitrust statutes on foreign regulators-a task clearly beyond anyone's vision of antitrust's appropriate mandate. The broad view of extraterritorial jurisdiction and the narrow conception of comity developed in the Hartford Fire decision72 become affirmatively offensive to foreign regulatory prerogatives when the antitrust laws are applied beyond their traditional "core" concerns, and in ways that make the United States court little more than a substitute for the regulatory agency and for a foreign regulatory agency at that.

#### 8- Current law is inoffensive---labeling new businesses practices anticompetitive is seen as adventurist.

Herbert Hovenkamp 03. Ben V. & Dorothy Willie Professor of Law and History, University of Iowa. “Antitrust as Extraterritorial Regulatory Policy,” 48 Antitrust BULL. 629 (2003).

Such assertions of extraterritorial power may be relatively inoffensive when the complaint challenges naked price fixing or some other practice widely acknowledged by every competition law authority in the world as anticompetitive. But antitrust in newly deregulated industries has given rise to many more adventuresome antitrust claims about which there is significantly less consensus, even within the United States. A principal one of these is antitrust's essential facility doctrine, which requires a dominant firm to share a facility that is "essential" in the sense that rivals cannot prosper in the market without access to it.50 For example, under the essential facility doctrine a telephone company might be required to share its wire loop or other essential network elements with smaller long-distance or local carriers that want to deliver services in the market as well, but can do so only if they can interconnect. 51

#### Warming doesn’t rise to extinction – new studies.

Nordhaus 20 Ted Nordhaus, an American author, environmental policy expert, and the director of research at The Breakthrough Institute, citing new climate change forecasts. [Ignore the Fake Climate Debate, 1-23-2020, https://www.wsj.com/articles/ignore-the-fake-climate-debate-11579795816]//BPS

Beyond the headlines and social media, where Greta Thunberg, Donald Trump and the online armies of climate “alarmists” and “deniers” do battle, there is a real climate debate bubbling along in scientific journals, conferences and, occasionally, even in the halls of Congress. It gets a lot less attention than the boisterous and fake debate that dominates our public discourse, but it is much more relevant to how the world might actually address the problem. In the real climate debate, no one denies the relationship between human emissions of greenhouse gases and a warming climate. Instead, the disagreement comes down to different views of climate risk in the face of multiple, cascading uncertainties. On one side of the debate are optimists, who believe that, with improving technology and greater affluence, our societies will prove quite adaptable to a changing climate. On the other side are pessimists, who are more concerned about the risks associated with rapid, large-scale and poorly understood transformations of the climate system. But most pessimists do not believe that runaway climate change or a hothouse earth are plausible scenarios, much less that human extinction is imminent. And most optimists recognize a need for policies to address climate change, even if they don’t support the radical measures that Ms. Thunberg and others have demanded. In the fake climate debate, both sides agree that economic growth and reduced emissions vary inversely; it’s a zero-sum game. In the real debate, the relationship is much more complicated. Long-term economic growth is associated with both rising per capita energy consumption and slower population growth. For this reason, as the world continues to get richer, higher per capita energy consumption is likely to be offset by a lower population. A richer world will also likely be more technologically advanced, which means that energy consumption should be less carbon-intensive than it would be in a poorer, less technologically advanced future. In fact, a number of the high-emissions scenarios produced by the United Nations Intergovernmental Panel on Climate Change involve futures in which the world is relatively poor and populous and less technologically advanced. Affluent, developed societies are also much better equipped to respond to climate extremes and natural disasters. That’s why natural disasters kill and displace many more people in poor societies than in rich ones. It’s not just seawalls and flood channels that make us resilient; it’s air conditioning and refrigeration, modern transportation and communications networks, early warning systems, first responders and public health bureaucracies. New research published in the journal Global Environmental Change finds that global economic growth over the last decade has reduced climate mortality by a factor of five, with the greatest benefits documented in the poorest nations. In low-lying Bangladesh, 300,000 people died in Cyclone Bhola in 1970, when 80% of the population lived in extreme poverty. In 2019, with less than 20% of the population living in extreme poverty, Cyclone Fani killed just five people. “Poor nations are most vulnerable to a changing climate. The fastest way to reduce that vulnerability is through economic development.” So while it is true that poor nations are most vulnerable to a changing climate, it is also true that the fastest way to reduce that vulnerability is through economic development, which requires infrastructure and industrialization. Those activities, in turn, require cement, steel, process heat and chemical inputs, all of which are impossible to produce today without fossil fuels. For this and other reasons, the world is unlikely to cut emissions fast enough to stabilize global temperatures at less than 2 degrees above pre-industrial levels, the long-standing international target, much less 1.5 degrees, as many activists now demand. But recent forecasts also suggest that many of the worst-case climate scenarios produced in the last decade, which assumed unbounded economic growth and fossil-fuel development, are also very unlikely. There is still substantial uncertainty about how sensitive global temperatures will be to higher emissions over the long-term. But the best estimates now suggest that the world is on track for 3 degrees of warming by the end of this century, not 4 or 5 degrees as was once feared. That is due in part to slower economic growth in the wake of the global financial crisis, but also to decades of technology policy and energy-modernization efforts. “We have better and cleaner technologies available today because policy-makers in the U.S. and elsewhere set out to develop those technologies.” The energy intensity of the global economy continues to fall. Lower-carbon natural gas has displaced coal as the primary source of new fossil energy. The falling cost of wind and solar energy has begun to have an effect on the growth of fossil fuels. Even nuclear energy has made a modest comeback in Asia.

## FTC DA

#### **Algorithmic bias risks nuke war.**

Elsa B. Kania 17. Adjunct fellow with the Technology and National Security Program at the Center for a New American Security, 11/15/17. “The critical human element in the machine age of warfare.” https://thebulletin.org/2017/11/the-critical-human-element-in-the-machine-age-of-warfare/

Today, however, the human in question might be considerably less willing to question the machine. The known human tendency towards greater reliance on computer-generated or automated recommendations from intelligent decision-support systems can result in compromised decision-making. This dynamic—known as automation bias or the overreliance on automation that results in complacency—may become more pervasive, as humans accustom themselves to relying more and more upon algorithmic judgment in day-to-day life.

In some cases, the introduction of algorithms could reveal and mitigate human cognitive biases. However, the risks of algorithmic bias have become increasingly apparent. In a societal context, “biased” algorithms have resulted in discrimination; in military applications, the effects could be lethal. In this regard, the use of autonomous weapons necessarily conveys operational risk. Even greater degrees of automation—such as with the introduction of machine learning in systems not directly involved in decisions of lethal force (e.g., early warning and intelligence)—could contribute to a range of risks.

Friendly fire—and worse. As multiple militaries have begun to use AI to enhance their capabilities on the battlefield, several deadly mistakes have shown the risks of automation and semi-autonomous systems, even when human operators are notionally in the loop. In 1988, the USS Vincennes shot down an Iranian passenger jet in the Persian Gulf after the ship’s Aegis radar-and-fire-control system incorrectly identified the civilian airplane as a military fighter jet. In this case, the crew responsible for decision-making failed to recognize this inaccuracy in the system—in part because of the complexities of the user interface—and trusted the Aegis targeting system too much to challenge its determination. Similarly, in 2003, the US Army’s Patriot air defense system, which is highly automated with high levels of complexity, was involved in two incidents of fratricide. In these stances, “naïve” trust in the system and the lack of adequate preparation for its operators resulted in fatal, unintended engagements.

As the US, Chinese, and other militaries seek to leverage AI to support applications that include early warning, automatic target recognition, intelligence analysis, and command decision-making, it is critical that they learn from such prior errors, close calls, and tragedies. In Petrov’s successful intervention, his intuition and willingness to question the system averted a nuclear war. In the case of the USS Vincennes and the Patriot system, human operators placed too much trust in and relied too heavily on complex, automated systems. It is clear that the mitigation of errors associated with highly automated and autonomous systems requires a greater focus on this human dimension.

#### That turns the environment---nuclear winter, food radiation, nuclear ag shortages

Starr, ’14 Steven Starr, the Senior Scientist for Physicians for Social Responsibility and Director of the Clinical Laboratory Science Program at the University of Missouri. Starr has published in the Bulletin of the Atomic Scientists and the Strategic Arms Reduction (STAR) website of the Moscow Institute of Physics and Technology, June 11th, 2014, “There Can be No Winners in a Nuclear War”, Truth Out, <https://truthout.org/articles/there-can-be-no-winners-in-a-nuclear-war/>, EO

Nuclear war has no winner. Beginning in 2006, several of the world’s leading climatologists (at Rutgers, UCLA, John Hopkins University, and the University of Colorado-Boulder) published a series of studies that evaluated the long-term environmental consequences of a nuclear war, including baseline scenarios fought with merely 1% of the explosive power in the US and/or Russian launch-ready nuclear arsenals. They concluded that the consequences of even a “small” nuclear war would include catastrophic disruptions of global climate and massive destruction of Earth’s protective ozone layer. These and more recent studies predict that global agriculture would be so negatively affected by such a war, a global famine would result, which would cause up to 2 billion people to starve to death. These peer-reviewed studies – which were analyzed by the best scientists in the world and found to be without error – also predict that a war fought with less than half of US or Russian strategic nuclear weapons would destroy the human race. In other words, a US-Russian nuclear war would create such extreme long-term damage to the global environment that it would leave the Earth uninhabitable for humans and most animal forms of life. A recent article in the Bulletin of the Atomic Scientists, “Self-assured destruction: The climate impacts of nuclear war,” begins by stating: “A nuclear war between Russia and the United States, even after the arsenal reductions planned under New START, could produce a nuclear winter. Hence, an attack by either side could be suicidal, resulting in self-assured destruction.” In 2009, I wrote “Catastrophic Climatic Consequences of Nuclear Conflicts” for the International Commission on Nuclear Non-proliferation and Disarmament. The article summarizes the findings of these studies. It explains that nuclear firestorms would produce millions of tons of smoke, which would rise above cloud level and form a global stratospheric smoke layer that would rapidly encircle the Earth. The smoke layer would remain for at least a decade, and it would act to destroy the protective ozone layer (vastly increasing the UV-B reaching Earth) as well as block warming sunlight, thus creating Ice Age weather conditions that would last 10 years or longer. Following a US-Russian nuclear war, temperatures in the central US and Eurasia would fall below freezing every day for one to three years; the intense cold would completely eliminate growing seasons for a decade or longer. No crops could be grown, leading to a famine that would kill most humans and large animal populations. Electromagnetic pulse from high-altitude nuclear detonations would destroy the integrated circuits in all modern electronic devices, including those in commercial nuclear power plants. Every nuclear reactor would almost instantly meltdown; every nuclear spent fuel pool (which contain many times more radioactivity than found in the reactors) would boil off, releasing vast amounts of long-lived radioactivity. The fallout would make most of the US and Europe uninhabitable. Of course, the survivors of the nuclear war would be starving to death anyway. Once nuclear weapons were introduced into a US-Russian conflict, there would be little chance that a nuclear holocaust could be avoided. Theories of “limited nuclear war” and “nuclear de-escalation” are unrealistic. In 2002 the Bush administration modified US strategic doctrine from a retaliatory role to permit preemptive nuclear attack; in 2010, the Obama administration made only incremental and miniscule changes to this doctrine, leaving it essentially unchanged. Furthermore, Counterforce doctrine – used by both the US and Russian military – emphasizes the need for preemptive strikes once nuclear war begins. Both sides would be under immense pressure to launch a preemptive nuclear first-strike once military hostilities had commenced, especially if nuclear weapons had already been used on the battlefield. Both the US and Russia each have 400 to 500 launch-ready ballistic missiles armed with a total of at least 1800 strategic nuclear warheads, which can be launched with only a few minutes warning. Both the US and Russian Presidents are accompanied 24/7 by military officers carrying a “nuclear briefcase,” which allows them to transmit the permission order to launch in a matter of seconds. Yet top political leaders and policymakers of both the US and Russia seem to be unaware that their launch-ready nuclear weapons represent a self-destruct mechanism for the human race. For example, in 2010, I was able to publicly question the chief negotiators of the New START treaty, Russian Ambassador Anatoly Antonov and (then) US Assistant Secretary of State Rose Gottemoeller, during their joint briefing at the UN (during the Non-Proliferation Treaty Review Conference). I asked them if they were familiar with the recent peer-reviewed studies that predicted the detonation of less than 1% of the explosive power contained in the operational and deployed US and Russian nuclear forces would cause catastrophic changes in the global climate, and that a nuclear war fought with their strategic nuclear weapons would kill most people on Earth. They both answered “no.” More recently, on April 20, 2014, I asked the same question and received the same answer from the US officials sent to brief representatives of the NGOS at the Non-Proliferation Treaty Preparatory Committee meeting at the UN. None of the US officials at the briefing were aware of the studies. Those present included top officials of the National Security Council. It is frightening that President Obama and his administration appear unaware that the world’s leading scientists have for years predicted that a nuclear war fought with the US and/or Russian strategic nuclear arsenal means the end of human history. Do they not know of the existential threat these arsenals pose to the human race . . . or do they choose to remain silent because this fact doesn’t fit into their official narratives? We hear only about terrorist threats that could destroy a city with an atomic bomb, while the threat of human extinction from nuclear war is never mentioned – even when the US and Russia are each running huge nuclear war games in preparation for a US-Russian war. Even more frightening is the fact that the neocons running US foreign policy believe that the US has “nuclear primacy” over Russia; that is, the US could successfully launch a nuclear sneak attack against Russian (and Chinese) nuclear forces and completely destroy them. This theory was articulated in 2006 in “The Rise of U.S. Nuclear Primacy,” which was published in Foreign Affairs by the Council on Foreign Relations. By concluding that the Russians and Chinese would be unable to retaliate, or if some small part of their forces remained, would not risk a second US attack by retaliating, the article invites nuclear war. Colonel Valery Yarynich (who was in charge of security of the Soviet/Russian nuclear command and control systems for 7 years) asked me to help him write a rebuttal, which was titled “Nuclear Primacy is a Fallacy.” Colonel Yarynich, who was on the Soviet General Staff and did war planning for the USSR, concluded that the “Primacy” article used faulty methodology and erroneous assumptions, thus invalidating its conclusions. My contribution lay in my knowledge of the recently published (in 2006) studies, which predicted even a “successful” nuclear first-strike, which destroyed 100% of the opposing side’s nuclear weapons, would cause the citizens of the side that “won” the nuclear war to perish from nuclear famine, just as would the rest of humanity

#### Link turns case. Expanded antitrust enforcement of anticompetitive practices causes backlash.

Alison Jones 20. Professor of Law at King's College London, with William E. Kovacic, March, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” The Antitrust Bulletin. https://journals.sagepub.com/doi/full/10.1177/0003603X20912884

One possible solution to rigidities that have developed in Sherman Act jurisprudence is for the FTC to rely more heavily on the prosecution, through its own administrative process, of cases based on Section 5 of the FTC Act and its prohibition of “unfair methods of competition.”93 This section allows the FTC94 to tackle not only anticompetitive practices prohibited by the other antitrust statutes but also conduct constituting incipient violations of those statutes or behavior that exceeds their reach. The latter is possible where the conduct does not infringe the letter of the antitrust laws but contradicts their basic spirit or public policy.95

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97

The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded some successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

#### Algorithmic white supremacy is an existential threat---turns racial violence impacts.

Bishop Garrison 19. Deputy Foreign Policy Adviser for Clinton, JD-William & Mary, Member of the Truman National Security Project’s Defense Council, Member of the Truman National Security Project’s Defense Council, served two deployments in Iraq in the Army, 2010 graduate of William and Mary Law School, served in various national security positions in the Obama Administration and served as Deputy Foreign Policy Adviser for the 2016 Clinton campaign, RACISM IS AN EXISTENTIAL THREAT, 2019, https://inkstickmedia.com/racism-is-an-existential-threat/

This hatred of communities of color and other vulnerable groups didn’t appear overnight. Its heritage is deeply rooted in slavery, the treatment of African slaves, and the continued struggle of the black American community for equal treatment. Now, arguably more than at any time in recent history, we need to recognize that extremism, racist policies, and white supremacy stand as existential threats not only to American life but to the future of our country and others around the globe. It’s time we have very real, very honest, and potentially very awkward conversations about race, the role it has played throughout American history, and what we are going to do to reconcile our past and protect our future.

Today, as immigrants of color continue to serve as scapegoats for the ills of American society, the Department of Housing and Urban Development has proposed a new rule that would allow landlords to use algorithms during the housing application review process — as a proxy for immutable traits otherwise protected by law: race, gender, and disability. These policies, which would apply to situations in which evidence of direct, intentional discrimination does not exist, would ultimately undermine, and perhaps near-completely impede, the ability of tenants to bring disparate impact discrimination claims against landlords, as long as the landlord stipulates that their intended use for the algorithm is not discriminatory and the third neutral party that develops the algorithm can attest to that fact. At the same time, the algorithms used would likely result in a disproportionately negative impact on protected tenants – partly because they provide cover to racist people who want to exclude black renters and draw a Venn diagram with a near-perfect circle around those who listen to rap music and those who tend to be black. We’re still doing this. Much like the use of biometric data and the algorithms of artificial intelligence that have difficulty differentiating faces of people of color, we’re still finding ways — new ways, in the technological age — to discriminate.

The country’s horrific history on race and its continued refusal to engage these problems head-on has exacerbated the issue to the point of a violent crisis. This crisis continues to seep into our state and local domestic policies, our technologies, the algorithms of social media companies, and (potentially) our future like a corrosive poison contaminating a water table. We will continue to face the nation-ending threat of white supremacy and white nationalist extremism unless we invest in Combating Violent Extremism (CVE) programs, which this administration has cut, and find the courage to have honest-to-God difficult, uncomfortable conversations in our homes and communities about our history of race and privilege in America and how it has shaped our lives today.

An example of this in practice is the New York Times Magazine’s 1619 Project, a series of opinion pieces, poetry, essays, and historical works designed to inform readers on the treatment and history of slavery, segregation, and Jim Crow laws in America. The project’s title comes from the August anniversary of the arrival of the first African slaves, 20-30 individuals from what is now modern-day Angola, in the British American colonies. Each work highlights not only past atrocities and injustices experienced by black Americans, but ongoing systemic issues that have plagued the nation from its original sin of slavery into the present day. It’s an important effort that may very well shape the dialogue around race, inclusion, and the need for steadfast policies that may one day fill the discriminatory gaps in our society and help heal the country. And the effort is, somehow, in 2019, controversial.

#### Per se violations still go to court.

Bona Law ND (didn’t have time to cite, sorry: <https://www.bonalaw.com/antitrust-standards-of-review-the-per-se-rule-of-reason-and-quic.html>)

In other words, first (besides antitrust injury), a plaintiff is only required to prove that the specific anticompetitive conduct actually took place. The plaintiff does not need to demonstrate the conduct’s competitive unreasonableness or negative competitive effects in the relevant product and geographic markets.

#### FTC intervenes in patent disputes.

Elizabeth A. N. Hass et. al. 18. James T. Mckeown, John F. Nagle, Kate E. Gehl. Partner and litigation attorney with Foley & Lardner LLP, and current vice chair of the firm’s national Antitrust Practice Group. partner in Foley & Lardner LLP's Milwaukee office, is a member and the former chair of the firm’s national Antitrust Practice and is a former member of the firm’s Management Committee.  senior counsel and litigation lawyer with Foley & Lardner LLP. DOJ and FTC Signal Shifts in Antitrust Enforcement of Essential Patent Disputes. No Publication. 10-10-2018. https://www.foley.com/en/insights/publications/2018/10/doj-and-ftc-signal-shifts-in-antitrust-enforcement

FTC’s Approach to FRAND Violations

Although the DOJ’s New Madison Approach has attracted considerable publicity, historically the FTC, and not the DOJ, intervened most frequently on behalf of implementers in FRAND disputes over the past two decades. Accordingly, Chairman Simons’ recent comments – even if representing his personal views – may mark a more significant change in enforcement actions in the United States.

Speaking to the Global Antitrust Enforcement Symposium at Georgetown University Law Center,4 Simons echoed his counterpart at the DOJ, stating, “We agree with the division leadership that a breach of a FRAND commitment standing alone is not sufficient to support a Sherman Act violation. The same is true even for a fraudulent promise to abide by a FRAND commitment. More is needed.”

#### Historically proven---wide ranging studies and enforcement.

Alden F. Abbott 20. General Counsel, U.S. Federal Trade Commission. Keynote Address, IP Watchdog CON2020 Virtual Conference. 9-17-2020. https://www.ftc.gov/system/files/documents/public\_statements/1581598/abbott\_ip\_watchdog\_speech\_09-17-20.pdf

For over 20 years, the FTC has used policy tools to address emerging issues at the intersection of antitrust and IP. These efforts include convening public hearings to examine issues such as the role of patent quality and the role of antitrust in promoting innovation. • 2003 FTC Report on the Patent System; 2007 joint FTC-DOJ Report on Antitrust Enforcement and IP Rights (how antitrust and IP can align with the patent system to promote innovation); 2009 FTC Report on Biologic Drug Competition; and 2011 FTC Evolving Marketplace Report (emphasis on notice to public of what a patent protects and remedies for patent infringement). • Also, FTC Act 6(b) reports (e.g., 2016 Patent Assertion Entities Report). • Section 6(b) empowers FTC to conduct wide-ranging studies that do not have a specific law enforcement purpose, enhance quality of policy dialogue. • Also, FTC files amicus briefs and advocacy letters.

#### FTC pursued patent law to SCOTUS.

Noah Joshua Phillips 19. Commissioner on the Federal Trade Commission. IP and Antitrust Laws: Promoting Innovation in a High-Tech Economy. 2019 Patents in Telecoms and the Internet of Things Public Workshop ACT | The App Association. 03-20-2019. Federal Trade Commission. Pg. 11

Some courts took different views, with some applying the aforementioned “scope of the patent” test, permitting virtually all such settlements. But the FTC pursued the issue all the way up to the Supreme Court. In its 2013 Actavis decision, the Court held that such “large and unjustified payments” flowing in the wrong direction raise a red flag indicating that the settlements may have anticompetitive effects.28 Several pharmaceutical drug manufacturers responded by arguing “large and unjustified payments” referred only to cash payments, and began exploring various in-kind payments instead. This included arrangements like a commitment from the branded manufacturer not to introduce an authorized generic, which would undercut the revenue the generic challenger in such cases would otherwise earn. It also led some settling parties to attempt to disguise cash payments as part of other side deals. This conduct underscores the need for the Commission to be on the watch for creative attempts to manipulate regulatory regimes or to evade liability.

#### 1. FTC is cash-strapped---the plan destroys other enforcement priorities.

Nicolás Rivero 21. Technology reporter at Quartz. “Biden’s antitrust crusaders can’t crusade without Congress.” 3/11/21. https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/

But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years.

A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.”

#### 2. Limited resources force tradeoffs in enforcement decisions.

Bernard (Barry) A. Nigro Jr. et al., 21 – Chair of Fried Frank's Global Antitrust and Competition Department, former Principal Deputy Assistant Attorney General at the DOJ, with Nathaniel L. Asker and Aleksandr B. Livshits, 1/5/21. “Managing Antitrust Risk in the Biden Administration.” Fried Frank Antitrust & Competition Law Alert. https://www.friedfrank.com/siteFiles/Publications/FFAntitrustAggressiveAntitrustEnforcement01052021.pdf

Further, despite a record number of litigated cases, the budget at the antitrust agencies is insufficient to match the rhetoric of more enforcement. The DOJ had 25% fewer full-time employees in 2019 than it had 10 years earlier9 and the FTC recently imposed a hiring freeze. With limited resources, the agencies are forced to make important tradeoffs in deciding what matters to challenge, settle, or walk away from. Indeed, Commissioner Wilson reportedly voted against bringing a lawsuit to block CoStar’s acquisition of RentPath, in part, because of limited FTC resources.10 Although the agencies will receive a modest budget increase for the current fiscal year,11 it is far short of what some think is needed.12 As antitrust enforcement has become a bipartisan issue, a significant increase in the antitrust agencies’ budgets in the future is likely.

# 2NR

## Japan DA

#### No self-fulfilling prophesy---securitizing the danger of US-China war creates the caution and risk-aversion necessary to avoid it.

Wang 20, Professor of Political Science at Western Michigan University. He holds a Ph.D. in political science from the University of Chicago. (Yuan-kang, 11/9/20, "Roundtable 12-2 on *Thucydides’s Trap? Historical Interpretation, Logic of Inquiry, and the Future of Sino-American Relations*", *H-Diplo | ISSF*, https://issforum.org/roundtables/12-2-thucydides)

Throwing the Baby Out with the Bathwater? Chan warns that the discourse on Thucydides’s Trap and power transition can create a self-fulfilling prophecy. If leaders believe in Thucydides’s Trap and act accordingly, it may create the anticipated conditions that make war more likely. Talking and thinking in terms of Thucydides’s Trap will influence the state’s construction of its identity as well as its definition of interests and preferences. The discourse is harmful because it encourages ‘othering’ the opponent and contributes to confrontation. Should we, then, throw out the proposition that war is more likely when the system is undergoing a power transition? It might be worthwhile to go back to what Thucydides’s Trap refers to: “the severe structural stress caused when a rising power threatens to upend a ruling one. In such conditions, not just extraordinary, unexpected events, but even ordinary flashpoints of foreign affairs, can trigger large-scale conflict.”[112] Instead of creating a self-fulfilling prophecy, this statement should induce caution from leaders in Beijing and Washington. Understanding the danger of war is the first step to avoid being trapped in it. Like Chan, Allison seeks to offer “a set of principles and strategic options for those seeking to escape Thucydides’s Trap and avoid World War III.”[113] Obviously, historical analogies cannot completely capture an ongoing event. Allison himself cautions against “facile analogizing” and emphasizes that “the differences matter at least as much as the similarities.”[114] The purpose of analogizing Thucydides’s Trap is not to shoehorn China and the United States into the roles of Athens and Sparta respectively, as Chan suggests (17-18), but to underscore the enduring feature of international politics throughout the ages. The dynamics of conflict highlighted by Thucydides remain as relevant today as it was two thousand years ago. Many scholars accuse structural theory of determinism, as Chan does, (14, 34), even though structuralists do not adopt it. States can go to war for a variety of reasons. Attempting to isolate a single cause for all wars is impossible. The proposition that war tends to break out during a power transition is better understood as a probabilistic—not deterministic—statement. The structural tensions cause by power shifts can substantially increase the probabilities of war, much like dry leaves waiting for a spark, but it does not mean that war will inevitably break out. Properly understood, Thucydides’s Trap cautions us to be prepared for the danger of war during a power transition. Overall, Chan’s book provides a stronger critique of power transition theory than of Thucydides’s Trap. Students of power shifts should take his argument seriously and avoid the pitfalls he identifies. We should not, however, hastily dismiss the warnings of Thucydides’s Trap.