**R8 D7 Disclosure**

**1NC**

**1NC---T**

Topicality---

**Interpretation---the aff should only win the debate if they can prove the resolution is true**

**The USFG is made up of three branches in Washington D.C.**

**Dictionary of Government and Politics ’98** (Ed. P.H. Collin, p. 292)

United States of America (USA) [ju:’naitid ‘steits av e’merike] noun independent country, a federation of states (originally thirteen, now fifty in North America; the United States Code = book containing all the permanent laws of the USA, arranged in sections according to subject and revised from time to time COMMENT: the federal government (based in Washington D.C.) is formed of a legislature (the Congress) with two chambers (the Senate and House of Representatives), an executive (the President) and a judiciary (the Supreme Court). Each of the fifty states making up the USA has its own legislature and executive (the Governor) as well as its own legal system and constitution

**“Core antitrust laws” refers to the Sherman and Clayton Act**

**The Antitrust Division 07** – Law enforcement agency that enforces the U.S. antitrust laws

“Antitrust Division Statement Regarding the Release of the Antitrust Modernization Commission Report,” The Antitrust Division, Department of Justice, April 2007, https://www.justice.gov/archive/atr/public/press\_releases/2007/222344.htm

The AMC has made many specific recommendations in its report, and the Division is in the process of reviewing all of them. The Division commends the AMC for its three primary conclusions:

Free-market competition should remain the touchstone of United States' economic policy. The Commission's conclusion in this regard is a fundamental starting point for policy makers. Over a century of experience has shown that robust competition among businesses, each striving to be increasingly successful, leads to better quality products and services, lower prices, and higher levels of innovation.

The **core antitrust laws**—**Sherman Act sections 1 and 2** and **Clayton Act section 7**—and their application by the courts and federal enforcement agencies are sound and appropriately safeguard the competitiveness of the U.S. economy.

New or different rules are not needed for industries in which innovation, intellectual property, and technological innovation are central features. Unlike some other areas of the law, the core antitrust laws are **general in nature** and have been **applied to many different industries** to protect free-market competition successfully over a long period of time despite changes in the economy and the increasing pace of technological advancement. One of the great benefits of the Sherman and Clayton Acts is their **adaptability** to **new economic conditions** without sacrificing their ability to protect competition.

**Expanding the scope requires Congressional action**

**King 19** – Attorney, BurnsBarton PLC

Kathryn Hackett King, Defendants State of Arizona, Davidson, and Shannon’s Reply in Support of Motion to Dismiss Complaint, Toomey v. State of Arizona, et al., US District Court for the District of Arizona, January 2019, LexisNexis

In Title VII, Congress made clear it was unlawful for an employer to discriminate “because of sex.” Plaintiff claims the State Defendants discriminated against him because of his transgender status, but as explained in the Motion (with supporting case law), (i) courts cannot expand Title VII without congressional action, and (ii) Congress has repeatedly had the opportunity to enact legislation to add gender identity to Title VII, but has not done so. (Doc. 24, p.9-10). Plaintiff cannot refute that when Title VII does not protect a particular category, legislative action is required to change that.5 Plaintiff argues Congress’s failure to enact new legislation to add gender identity is not relevant because later acts of Congress are not probative of prior legislative intent. But the point is that **expanding** the **scope** of a **federal statute requires congressional**, **not judicial**, **action**. Gunnison v. Comm. of Int. Rev., 461 F.2d 496, 499 (7th Cir. 1972) (“Further expansion of the favored treatment specifically provided in §402(a)(2) as an exercise of legislative grace is a **function for the Congress**, **not for the Courts**”). Yet here, Congress has failed to act to expand Title VII. Congress’s failure to act demonstrates Title VII does not include unenumerated categories. Bibby v. Phil. Coca Cola, 260 F.3d 257, 265 (3d Cir. 2011) (“Harassment on the basis of sexual orientation has no place in our society….Congress has not yet seen fit, however, to provide protection against such harassment”).

**“Prohibitions” are laws that forbid action**

**Sweet 03** – Judge, United States District Court, New York Southern

Robert W. Sweet, Am. Nat'l Fire Ins. Co. v. Mirasco, Inc., 249 F. Supp. 2d 303, United States District Court for the Southern District of New York, March 2003, LexisNexis

In any case, even if the word "embargo" does not stretch so far, there is no doubt that the restriction against the importation of all IBP goods constitutes a "prohibition" under Clause D. HN15 "**Prohibition**" is defined by **Black's Law Dictionary** to be "a **law or order** that **forbids a certain action**." Black's Law Dictionary 1228 (7th ed. 1999). The dictionary definition is similar: "a **declaration** or **injunction forbidding some action**." Webster's New International Dictionary, Unabridged 1978 (2d ed. 1944). The common understanding of the word "prohibition" has similar connotations, with one exception. As Mirasco points out, any governmental action -- including the rejection on which insurance coverage is based -- could potentially be deemed a prohibition under the definitions above as a declaration forbidding the entry of goods. Therefore, a **prohibition** must be **qualitatively different** from a **rejection**. That difference is that the **prohibition occurs prior to** the government's dealing with the **specific** cargo at issue and is of a **more sweeping nature** than the **simple administrative function** performed by customs officials determining whether or not goods should be permitted into the country. Decree # 6 is such a prohibition, in that it was a **law or declaration** -- **issued prior to**, **separate from and broader than** the Egyptian authorities' administrative determination of whether the M/V Spero cargo should be permitted entry -- that forbids the importation of IBP products.

**2 impacts---**

**[1]---Burdens---the affirmative has failed to meet their burden to prove the resolution is true---that necessitates voting negative because there is no rational basis for voting aff---the neg should not be expected to uphold their burden of rejoinder sans a topical aff because neg ground is inherently reactionary and reliant upon the aff meeting their burden first. Winning the ballot is thus concomitant with the acceptance of the undergirding structure of resolutional debate to give coherence to the ballot**

**It’s an impact---debate is not monolithic, but we each have a reason for participating in this debate that is important to us---absent a structure that provides logical meaning to things like pairings, judges, speech times, and ballots, the activity ceases to exist which forecloses the ability for anybody to realize their own imbued value in it**

**[2]---Incentives---abdicating the resolution allows the aff to call shotgun on truth and monopolize the moral high ground, but our model guarantees negative teams can be prepared for and have substantive answers to any 1AC---that creates sustainable and prolonged engagement over the course of a year, which is a better internal link to solving their aff, but that can only happen via a predictable structure of debate**

**1NC---DA**

Innovation DA---

**There’s a wave of M&A now – companies doubt rule changes will affect them now**

David **French and** Sierra **Jackson**, Reuters, July 12, 20**21**, Analysis: Dealmakers see M&A rush, then chills, in Biden's antitrust crackdown

Dealmakers expect **a new wave of transformative** U.S. mergers and acquisitions (**M&A**), as companies **rush to complete deals** **before President Joe Biden's antitrust push takes shape**, to be followed by a slowdown when regulators start cracking down.

Biden signed a sweeping executive order on Friday to bolster competition within the U.S. economy. This included a call for regulatory agencies to increase scrutiny of corporate tie-ups which have left major sectors such as technology and healthcare dominated by few players. read more

The order came amid an **unprecedented M&A frenzy**, as companies **borrow cheaply** and **spend mountains of cash** they have accumulated on **transformative deals** to reposition themselves for the post-pandemic world. **Almost $700 billion** worth of U.S. deals were announced in the second quarter, **the highest on record**.

The dealmaking **bonanza is set to continue**, as companies seek to **take advantage of the time window** during which regulators **frame precise rules** to implement Biden's order, advisers to the companies said. The M&A slowdown will come **only when regulators implement the rule changes**, **possibly in two years or more,** they added.

"The order itself will be **less likely to have a chilling effect** on strategic M&A than the potential chilling effect of a significant increase in the number of prolonged investigations and merger challenges brought by the agencies," said Michael Schaper, partner at law firm Debevoise & Plimpton.

Spokespeople for the White House and the two main antitrust regulators, the Federal Trade Commission (FTC) and the U.S. Department of Justice (DoJ), did not immediately respond to requests for comment.

Dealmakers were **bracing for a tougher antitrust environment** under Biden **even before last week's executive order.** Last month, the DoJ sued to stop insurance broker Aon's (AON.N) $30 billion acquisition of peer Willis Towers Watson (WTY.F). And Biden tapped Lina Khan, an antitrust researcher who has focused her work on Big Tech's immense market power, to chair the FTC.

**Maxine’s successful case shocks those mergers ---undermines dynamism and global competitiveness**

**Thierer 21** – Adam Thierer is a senior research fellow with the Mercatus Center at George Mason University. Author of several books on antitrust law; former president of the Progress & Freedom Foundation, director of Telecommunications Studies at the Cato Institute, and a senior fellow at the Heritage Foundation.

(Adam Thierer, 2-25-2021, "Open-ended antitrust is an innovation killer," TheHill, https://thehill.com/opinion/technology/540391-open-ended-antitrust-is-an-innovation-killer)

Antitrust reform is a hot bipartisan item today, with Democrats and Republicans floating proposals to significantly expand federal control over the marketplace. Much of this activity is driven by growing concern about some of the nation’s largest digital technology companies, including Facebook, Google, Amazon and Apple.

Unfortunately, the calls for more bureaucracy and regulation emanating from all corners of the political world could have an unintended consequence: **discouraging the sort of vibrant innovation and consumer choice** that made America’s tech companies household names across the globe.

Sen. Amy Klobuchar (D-Minn.) is leading one charge. Klobuchar, who chairs the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, recently introduced the “Competition and Antitrust Law Enforcement Reform Act.” This sweeping measure seeks to expand the powers and budgets of antitrust regulators at the Federal Trade Commission and the Department of Justice. It also includes new filing requirements and potentially hefty civil fines.

**The most important feature** is the proposed **change to the legal standard by which regulators approve business deals**. It would allow the government to stop any deal that creates an “appreciable risk of materially lessening competition,” and it also defines exclusionary behavior as, “conduct that materially disadvantages one or more actual or potential competitors.”

These may sound like **simple**, **semantic tweaks**, but – much like some of the other policy ideas currently circulating – **they would upend decades of settled law and create a sea change in U.S. antitrust enforcement**. **This change could undermine business dynamism, innovation and investment in ways that inhibit the global competitiveness of U.S. businesses.**

Critics of merger and acquisition (M&A) activity by large tech firms include not only Sen. Klobuchar but also Republicans such as Sen. Josh Hawley (R-Mo.). Hawley recent offered an amendment to a budget bill that would preemptively prohibit mergers and acquisitions by dominant online firms. Klobuchar and Hawley believe that M&A skews the market in favor of today’s largest firms, entrenching their market power and discouraging innovation.

History teaches a different lesson. Consider DirecTV and Skype, both once considered innovative market leaders in their respective fields of satellite TV and internet telephony. Both firms stumbled, however, and they might not even be with us today without creative business deals. DirecTV has been partially or fully controlled by Hughes Electronics, News Corp., Liberty Media and now AT&T. Skype has swapped hands multiple times, moving from eBay, to a private investment firm and now to Microsoft.

These were complex deals, and some didn’t work, leading to divestitures. But each was a learning experience that illustrated **how dynamic media and technology markets** can be with firms constantly searching for **value-added arrangements** that serve their customers and shareholders. If we make this type of activity presumptively illegal, we’re imagining that **government bureaucrats are better suited to make these calls than businesspeople** and the consumers who choose whether or not to buy the product.

Worse yet, legal tests like those Klobuchar proposes – “conduct that materially disadvantages potential competitors” – **are remarkably open-ended and could be easily abused**. The system will be gamed by opponents of deals for business reasons. They will claim that their own failure to attract investors or customers must all be the fault of more creative rivals. That’s a recipe for **cronyism and economic stagnation.**

Those who worry about today’s largest tech giants becoming supposedly unassailable monopolies should consider how similar fears were expressed not so long ago about other tech titans, many of which we laugh about today. Just 14 years ago, headlines proclaimed that “MySpace Is a Natural Monopoly,” and asked, “Will MySpace Ever Lose Its Monopoly?” We all know how that “monopoly” ceased to exist.

At the same time, pundits insisted “Apple should pull the plug on the iPhone,” since “there is no likelihood that Apple can be successful in a business this competitive.” The smartphone market of that era was viewed as completely under the control of BlackBerry, Palm, Motorola and Nokia. A few years prior to that, critics lambasted the merger of AOL and TimeWarner as a new corporate “Big Brother” that would decimate digital diversity and online competition.

GOP divided over bills targeting tech giants

Today, we know these tales of the apocalypse ended up instead becoming case studies in the continuing power of “creative destruction.” New innovations and players emerged from many unexpected quarters, decimating whatever dreams of continued domination the old giants once had.

Today’s biggest players face similar pressures, and it’s better to let rivalry and innovation emerge organically, not through the wrecking ball of heavy-handed antitrust regulation.

**Internal link goes one way---large-firm dynamism is the only way to maintain tech leadership**

**Lee**, senior lecturer at the University of Hong Kong Faculty of Business and Economics, **‘19**

(David S., “Antitrust action risks holding back US tech giants in competition with China,” <https://asia.nikkei.com/Opinion/Antitrust-action-risks-holding-back-US-tech-giants-in-competition-with-China>)

But the administration should not forget the law of unintended consequences -- **effective** antitrust measures could **stifle** the ability of American tech companies to **compete with their Chinese challengers**. Presumably, that is the last thing the America First president wants to see.

While antitrust has been used to regulate technology companies before, perhaps most notably Microsoft two decades ago, its application against Amazon.com, Facebook, and Google seems different.

For the last half-century or so, U.S. antitrust law has been underpinned by the concept of maximizing **consumer welfare**, frequently measured by price to consumers. In regulating big technology companies today, however, a new paradigm has emerged, dubbed "hipster antitrust."

Hipster antitrust looks beyond traditional economic harm and includes wider effects such as wage inequality, data privacy intrusions, and sheer size as grounds to invoke the law.

But **the wider the antitrust authorities reach**, the more likely they are to **damage the tech giants' global competitiveness**. This applies **especially in the key field of artificial intelligence**, where the U.S. and China are world leaders.

AI is the engine powering the Fourth Industrial Revolution and the fuel for that engine is data, **lots of data**. Such data can **only be collected at scale**, which conflicts with hipster antitrust **notions of size**. If American antitrust measures compel large technology companies to shrink or in the extreme, to break up, then the U.S. will find itself at a **disadvantage** to China.

The idea of **size** is one of many **fundamental differences** separating Chinese and American technology ecosystems. Chinese government leaders have clearly grasped that scale matters for the technologies they want to dominate, such as artificial intelligence, as well as for the type of digital governance Beijing is striving to implement.

In the U.S., however, the economic value attached to scale is offset by deep-rooted concerns about privacy, bullying behavior and unfair political and social influence. Senator Elizabeth Warren of Massachusetts, a popular Democratic Party candidate for the 2020 presidential election, wrote: "Today's big tech companies have too much power -- too much power over our economy, our society and our democracy."

But in China this is not a hot-button political issue. In a recent fintech course I helped lead comprised of students from different countries, mainland Chinese students considered privacy differently than peers elsewhere. Though aspects of privacy are important to Chinese users, many readily understand there are trade-offs in operating on technology platforms.

Chinese technology platforms such as Alibaba and Meituan have developed **so-called "super apps"** that serve the same functions that users in the West might find by going to different applications on their devices.

Super apps are designed to be convenient to users so they can handle everything from ride hailing, shopping, food purchases, and payment, all without leaving the digital confines of a single app. This has become the dominant way Chinese citizens consume online. With the most internet users in the world, approximately 750 million, super apps also provide Chinese technology companies an incredible amount of data.

In his book, "AI Superpowers: China, Silicon Valley, and the New World Order," technology executive and investor, Kai-Fu Lee outlined four factors necessary to win the AI race: talent, computing speed, data, and government policy. Though the U.S. has an advantage in many areas, **that lead is shrinking**, and if China does overtake the U.S. in artificial intelligence, it will likely be a result **of advantages in data and government policy**.

This combination of data and government policy is perhaps best exemplified by SenseTime, widely considered the world's most valuable artificial intelligence startup. SenseTime boasts world leading facial recognition, which is enhanced because it reportedly has access to Chinese government databases, a rich source of data to further develop models.

Chinese companies like SenseTime have excelled in facial recognition, with some reports estimating that there are almost ten times as many Chinese facial recognition patents filed as American. Chinese surveillance technology is already used in the U.S., including New York City.

This widening gap will have **broader implications** beyond surveillance, security, and policing. Facial recognition technology will also serve as a biometric identifier for finance, retail, and health. With China moving forward aggressively both domestically and abroad in its use of such technologies, American competitors who are pursuing facial recognition, such as Amazon and Google, may not be able **to close the growing competitive chasm**.

So while American politicians may see antitrust investigations into large technology companies as necessary, there could be a significant impact on America's ability to compete with China.

Google's former CEO, Eric Schmidt forecast last year that China and the United States would lead the bifurcation of the internet into two spheres. Evidence of this splintering is already apparent. What remains undetermined, however, is which of those spheres will dominate.

Large Chinese technology companies, for example Alibaba Group Holding, are already setting-up far-flung outposts by partnering with and investing in local, non-Chinese technology companies around the world. This form of Chinese technological expansion allows Chinese big tech to **shape user privacy norms,** establish global networks, and attract more users into their ecosystems, all of which leads to increased user activity and ultimately more data.

While China aggressively expands its technological reach and hones its ability through mining evermore data, it is important that U.S. regulators understand that **aggressive antitrust sanctions** would risk **inhibiting American companies** from **maintaining the scale necessary to compete with their Chinese rivals**.

**AI supremacy will be a defining feature of superpower status**. And if future researchers one day examine how the U.S. **lost the war for artificial intelligence**, the hindsight of history may show that **the current antitrust debate was the fatal turning point**.

**Tech innovation prevents nuclear conflict---US leadership is key**

**Kroenig and Gopalaswamy 18** – Associate Professor of Government and Foreign Service at Georgetown University and Deputy Director for Strategy in the Scowcroft Center for Strategy and Security at the Atlantic Council; Director of the South Asia Center at the Atlantic Council

Matthew Kroenig and Bharath Gopalaswamy, "Will disruptive technology cause nuclear war?," Bulletin of the Atomic Scientists, 11-12-2018, <https://thebulletin.org/2018/11/will-disruptive-technology-cause-nuclear-war/>

Rather, we should think **more broadly** about how **new technology** might affect global politics, and, for this, it is helpful to turn to scholarly international relations theory. The dominant theory of the causes of war in the academy is the “bargaining model of war.” This theory identifies **rapid shifts** in the balance of power as a **primary cause of conflict**.

International politics often presents states with conflicts that they can settle through **peaceful bargaining**, but when bargaining **breaks down, war results**. **Shifts** in the balance of power are **problematic** because they **undermine effective bargaining**. After all, why agree to a deal today if your bargaining position will be stronger tomorrow? And, a clear understanding of the **military balance of power** can contribute to **peace**. (Why start a war you are likely to lose?) But shifts in the balance of power **muddy understandings** of which states have the advantage.

You may see where this is going. New technologies threaten to create potentially **destabilizing shifts** in the balance of power.

For decades, stability in Europe and Asia has been supported by US military power. In recent years, however, the balance of power in Asia has begun to shift, as China has increased its military capabilities. Already, Beijing has become **more assertive** in the region, claiming contested territory in the South China Sea. And the results of Russia’s **military modernization** have been on **full display** in its ongoing intervention in Ukraine.

Moreover, China **may have the lead** over the United States in **emerging technologies** that **could be decisive** for the future of military acquisitions and warfare, including 3D **printing**, **hypersonic** missiles, **quantum** computing, **5G** wireless connectivity, and **a**rtificial **i**ntelligence (AI). And Russian President Vladimir Putin is building new unmanned vehicles while ominously declaring, “Whoever leads in AI will rule the world.”

If China or Russia are able to **incorporate new technologies** into their militaries **before the United States**, then this could lead to the kind of **rapid shift** in the balance of power that **often causes war.**

If Beijing believes emerging technologies provide it with a **newfound, local military advantage** over the United States, for example, it may be **more willing** than previously to **initiate conflict over Taiwan**. And if Putin thinks new tech has **strengthened his hand**, he may be more tempted to launch a Ukraine-style **invasion of a NATO member**.

Either scenario could bring these **nuclear powers into direct conflict** with the United States, and once nuclear armed states are at war, there is an **inherent risk of nuclear conflict** through limited nuclear war strategies, nuclear brinkmanship, or simple accident or inadvertent escalation.

This framing of the problem leads to a different set of policy implications. The concern is not simply technologies that threaten to undermine nuclear second-strike capabilities directly, but, rather, any technologies that can result in a meaningful shift in the broader balance of power. And the solution is not to preserve second-strike capabilities, but to **preserve prevailing power balances** more broadly.

When it comes to new technology, this means that the United States should seek to **maintain an innovation edge**. Washington should also work with other states, including its nuclear-armed rivals, to develop a new set of arms control and nonproliferation agreements and export controls to deny these newer and potentially destabilizing technologies to potentially hostile states.

These are no easy tasks, but the consequences of Washington **losing the race** for technological superiority to its autocratic challengers just might mean **nuclear Armageddon**.

**1NC---K**

Legalism K---

**If they win that afrofuturism is a good method, their choice of future imagination is bad---**a**ntirust approaches are part of a broader legal proceduralism that puts power in the hands of conservative courts instead of democratic/progressive agencies – that guts effective governance thru a strong administrative state and prevents tackling existential threats like climate change, pandemics, and inequality**

**Bagley 19** – Professor of Law, UMich

Nicholas Bagley, Professor of Law, University of Michigan Law School, ARTICLE: THE PROCEDURE FETISH, 118 Mich. L. Rev. 345 (December, 2019)

**Administrative law** comprises a set of **procedural rules** that **affect the pace and composition of government action**. That same government action--whether it involves dispensing public benefits or regulating private conduct--allocates resources, risk, and power within the United States. The manner in which administrative law operates will thus **favor some interests over others**. That's not an indictment: any set of rules has the same character. Increasing the stringency of judicial review for new agency regulations, for example, will tend to aid those who have the most to lose from government action. By the same token, curbing judicial review will help those who stand to gain. **There is no neutral, value-free way to calibrate the stringency of judicial review**, and the point holds for administrative procedure more generally. The distribution of resources, risk, and power in the United States is partly a function of an administrative law that is supposed to be agnostic as to that distribution.

With increasing urgency over the past two decades, congressional Republicans have advanced proposals to **discipline a regulatory state** that, in their view, does too much and with **too little care**. These proposals travel under an array of names and acronyms, but they embrace a common tactic: they **pile procedure on procedure** in an effort to **create a thicket so dense** that **agencies** will either **struggle to act** or **give up** before they start. 1 The Regulatory Accountability Act (RAA), for example, would subject high-impact rules to an oral hearing, complete with cross-examination and a formal record; ban agencies from engaging in public outreach to advocate for their rules; stitch centralized executive oversight and rigorous cost-benefit analysis into law; impose onerous new rules on the issuance of guidance documents; and make adherence to all of these procedures subject to judicial review. 2 By **tilting the scales against agency action**, Republicans hope to end "job-killing regulations" and **invigorate the free market**. Not coincidentally, that means **favoring industry** over environmentalists, banks over consumer advocates, and management over labor.

The point is not that these are bad priorities. The point is that they are political priorities. Democrats understand as much. "By hamstringing the dedicated public servants charged with ensuring everything from safe infant [\*347] formula to clean drinking water to a fair day's pay for a fair day's work," writes Sam Berger, a former official in the Obama White House, "this bill would put corporate profits before people's lives and livelihoods." 3 William Funk notes that the RAA will "slow down, if not **make impossible, the development of regulations** that have major effects on the economy. It does not matter how many lives the regulation might save." 4 But the **opposition from the left presents a puzzle**. If adding new administrative procedures will so obviously advance conservative priorities, might not relaxing existing administrative constraints advance liberal ones? What if dedicated public servants are already hamstrung? What if it already does not matter how many lives a regulation might save?

Yet there is no Democratic version of the RAA, and little organized energy behind the idea that relaxing administrative procedures will be good for the environment, consumers, and workers. The **game is strictly defensive**: to **protect** administrative law, **not** to **transform** and rethink it. Actually, matters are worse than that. Some liberals are so enchanted with administrative procedures that they are calling for more. Democrats Heidi Heitkamp and Joe Manchin were Senate cosponsors of the RAA, arguing that it would make regulations "smarter." 5 Cass Sunstein also supports the bill, though not without reservation, and in so doing has thrown his support behind the imposition of the same procedures that Republicans hope will frustrate agency action. 6 Even those who are especially sensitive to the deficiencies of modern administrative law--Jon Michaels comes to mind--endorse court-centered proceduralism as part of their cure. 7

[\*348] Why aren't progressives clamoring to loosen administrative law's constraints? It's not for want of targets. Administrative law is shot through with **arguably counterproductive procedural rules.** In past work, for example, I have argued that the Office of Information and Regulatory Affairs imposes a **drag on regulation without adequate justification**; 8 that the **presumption in favor of judicial review** of agency action, and particularly the presumption in favor of preenforcement review, **should be reevaluated**; 9 and that the reflexive invalidation of defective agency action is wasteful and unnecessary. 10 But the list goes on. The judicially imposed rigors of notice-and-comment rulemaking, the practice of invalidating guidance documents that are "really" legislative rules, the Information Quality Act, the logical outgrowth doctrine, nationwide injunctions against invalid rules--**all could and perhaps should be reconsidered**.

In today's political landscape, however, "regulatory reform" is strictly the province of Republican policymakers, so much so that the anodyne phrase has acquired an antiregulatory connotation. Republicans have a reform agenda. Democrats don't. 11 What's more, the left's hesitation is not a response to Republican control of the federal government. When Democrats held both Congress and the White House in 2009 and 2010, they didn't press to streamline or rethink administrative law.

Liberal quiescence can be traced, instead, to two stories about the administrative state that have become deeply embedded in our legal culture. Fidelity to procedures, one story runs, is essential to sustain the fragile legitimacy of a powerful and constitutionally suspect administrative state. 12 On the other story, procedures assure public accountability by shaping the decisions of an executive branch that might otherwise be beholden to factional [\*349] interests. 13 Taken together, these stories suggest we should be thankful for the procedures we have and nervous about their elimination.

But this **legitimacy-and-capture narrative is overdrawn**--indeed, it is largely a **myth**. **Proceduralism** has a role to play in preserving legitimacy and discouraging capture, but it advances those goals more obliquely than is commonly assumed and may **exacerbate the very problems it aims to address**. In building this argument, I hope to call into question the administrative lawyer's instinctive faith in procedure, to **reorient discussion** to the trade-offs at the heart of any system designed to structure government action, and to soften resistance to the relaxation of unduly burdensome procedural rules. Notwithstanding academic claims that the Administrative Procedure Act (APA) has attained a kind of quasi-constitutional status, 14 administrative law remains very much an object of political contestation. Any convention that Congress can't tinker with the APA is quickly eroding, if indeed any such convention ever existed. We should acknowledge that fact even if we lament its loss.

In this, I hope to bring the practice of administrative law into conversation with a line of revisionist academic work that **questions the left's embrace of court-centric legalism**. That work, among other things, recovers how Progressive and New Deal state-builders **embraced a results-oriented**, **nonlegalistic approach to administrative power**. They understood--more clearly than we do now--that **strict procedural rules** and **vigorous judicial oversight could be mobilized** to frustrate their efforts to **curb market exploitation**, protect workers, and press for a **fairer distribution** of resources. 15 "Substantial justice," declared President Franklin Roosevelt in vetoing a predecessor bill to the APA, "remains a higher aim for our civilization than technical legalism." 16

The left's antiproceduralist orientation shifted in the wake of Brown v Board of Education, when the fight for civil rights moved into a legalistic register--a shift that, in the revisionist telling, both narrowed the scope of the civil rights movement's ambitions and hampered its efforts to address yawning racial inequalities. 17 Progressive reformers in the 1960s and the 1970s [\*350] drew inspiration from the civil rights example, and adopted the tools of **adversarial legalism** (to use Robert Kagan's phrase) 18 in an effort to **spur the vigorous enforcement of new** environmental and **consumer protection laws**. 19 That legalism, which opponents of state action avidly supported, 20 is our inheritance from that era. 21

Along the way, a **positive vision of the administrative state**--one in which its legitimacy is measured not by the stringency of the constraints under which it labors, but by how well it advances our collective goals--has been shoved to the side. 22 [FN22] See Kessler, supra note 15, at 733 (recalling the views of progressive reformers who "believed that an **autonomous administrative state was necessary** to achieve a more just distribution of the nation's resources, and that the achievement of this political economic goal, along with democratic support and expert guidance, were the sufficient conditions of the state's legitimacy"). [End FN] I recognize that now may not be the most auspicious time to press the point, when liberals have seized on administrative law as a means to resist the Trump Administration. But President Trump is temporary; administrative law is not. And an **administrative law** oriented around fears of a pathological presidency may itself be **pathological**--a **cure worse than the disease**. A decade after a financial crisis roiled the financial markets, in a century when **climate change** threatens **environmental catastrophe**, and in an era of **growing income and wealth inequality**, the wisdom of allowing procedural rules to hobble federal agencies is very much open to question. Administrative law may be about good governance, but it is also **about power:** the power to maintain the existing state of affairs, and the power to change it. It's **well past time for more skepticism about procedure.**

**The alternative is to reject normative engagement with legal institutions as currently constituted---failure causes multiple existential threats**

**Bagley 19** – Professor of Law, UMich

Nicholas Bagley, Professor of Law, University of Michigan Law School, ARTICLE: THE PROCEDURE FETISH, 118 Mich. L. Rev. 345 (December, 2019)

Because **the world is changing at a breakneck clip**, **a bias toward inaction means that the state will respond too slowly as new risks present themselves and existing risks come into focus.** **Internet commerce, drones, social media, cellular phones, algorithmic trading, driverless cars, and artificial intelligence barely existed two decades ago; today, they are** part (or are b**ecoming part) of the fabric of our lives.** **We only dimly understand how to cope with the attendant risks** to health, welfare, and privacy associated with these technological changes. At the same time, **older risks have become more prominent, whether because of evolving scientific understanding (climate change**, the **waning efficacy of antibiotics**), **shifting patterns of industrial organization (the rise of monopoly power across multiple industries**), **or crises that exposed fragility in complex systems (the financial crisis, Hurricane Maria**). **An administrative apparatus that cannot adapt to a changing world threatens to become a relic** of a bygone era. **It also becomes easier to dismantle**. Regulations adopted in a very different environment will come to look **ill fitting and unresponsive** to modern problems. **Justifying their abandonment or relaxation is straightforward**: the world really has changed. 118 **Adopting a new rule and defending it against concerted attack, however, remains enormously difficult.**

**Case**

**Their refusal to defend anything is exactly what makes nouveau radicalism so useless**

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(Gregory and Michael J., “The Treason of Intellectual Radicalism and the Collapse of Leftist Politics,” <http://logosjournal.com/2015/thompson-zucker/>)

But this is merely one fringe expression of what we see as a corrupted, simplified and de-politicized “new” radicalism. Once grounded in the Enlightenment impulse for progress, equality, rationalism, and the critical confrontation with asymmetrical power relations, the dominant trends of radical political thought now **evade** the concrete nature of these concerns. The battles that raged in the 1980s and 1990s between postmodernists and defenders of modernity – while serving as a harbinger of the contemporary split between the radical theorists divorced from reality and those who seek to establish anti-foundationalist conceptions of democratic discourse – were attached to a strong sense that the future of rationalism and radical politics hung in the balance. Today’s radical intellectuals **do not feel compelled to defend their arguments** **or respond to their critics.** Their purported radicalism becomes all the more **opaque** when the coherence of their claims is called into question. A concern for an exaggerated **subjectivity**, **identity politics**, **anti-empirical theories of power**, an **obsession with “difference**” – all serve to **deplete the radical tradition of its potency**. Radical intellectuals now formulate new vocabularies, **invent new forms of “subjectivity**,” and concoct **new languages** of discourse that only serve to **splinter** forms of political resistance, **consigning radicalism to the depths of incoherence** and (academic success notwithstanding) **political irrelevance**.

Indeed, the disintegration of the great radical movements of the nineteenth and twentieth centuries – from the labor movement to the Civil Rights movement – has **detached philosophical thinking** **from the mechanisms of power and political reality more broadly**. The result has been – despite the ironic new turn toward “anti-philosophy” – the conquest of politics by poorly constructed philosophy. **Abstraction has been the result**, as well as a panoply of **shibboleths** that have only served to **sever “radical” thought** from its relevance to contemporary politics and society. It seems to us that the survival of the tradition of rational, radical political and social criticism pivots on a confrontation with these new academic trends and fads.

**Abstract moralizing is useless when trying to construct a political strategy – only by evaluating the consequences of political strategies can we actual do something about issues facing us today**

David **Runciman 17**, Politics, Cambridge University, “Political Theory and Real Politics in the Age of the Internet,” The Journal of Political Philosophy, Volume 25, Issue 1, March 2017, Pages 3–21

Contemporary political realism carries echoes of this line of argument and of Bentham's shift from the weaker to the stronger version of it, even though Bentham's direct influence is rarely in evidence. Critics of the current ubiquity of the language of human rights often point out that in the absence of a robust account of the power relations that are needed to underpin any rights regime—in particular, an answer to the question of who does the enforcing—all such talk is a massive distraction from the real business of improving the situation on the ground to which human rights are meant to apply.9 But for more radical critics the emptiness of human rights talk is too convenient to be merely a confusion: it serves as the perfect cover for the sinister interests of those engaged in neo-colonial projects of exploitation and expropriation.10 However, these two poles of the Benthamite case against moralism—from inadvertent confusion to deliberate deception—do not exhaust the range of explanations for what is wrong with it. There is another answer, drawn from an alternative intellectual tradition, which appears more frequently in the current realist literature. This is the Weberian idea that moralism does not so much obscure what politicians are really up to, as **conceal the truth** about their personal motives from political actors themselves. In other words, political moralism is less a form of deception than of self-deception: it lets politicians avoid **looking political reality squarely in the face** because it allows them to believe they **have their eyes set on something higher**. Conviction politicians think they can **transcend the messy reality of politics**. That belief is **dangerous** because their response when they encounter the messy reality is to **deny it**, or to **ignore it**, or to insist they can **mould it to their higher purposes**, which **only makes the mess worse**. Weber's case against allowing an ethic of conviction to trump an ethic of responsibility in politics—which requires, among other things, that politicians **face up to the unintended consequences** of what they do—remains compelling.11 But it does not map onto any sharp distinctions between realism and moralism. That is because the convictions that can breed self-deception are **not necessarily moralistic beliefs**; they can be beliefs about **anything**, including beliefs about how **contingency trumps moral certainty**. On the Weberian account it is not **what you believe** but **how you believe it** that makes the difference. Realists, too, can be self-deceived, because the strength of their convictions against moralism produces its own self-deceptions and blind spots. This is the case that can be made against Bentham, who was so thoroughly dogmatic about the vapidity of all talk of rights that it served to blind him to what was missing from his own understanding of politics. Macaulay made the point in his celebrated takedown of the Benthamites published in the Edinburgh Review in 1829: ‘They surrender their understandings … to the meanest and most abject sophisms, provided these sophisms come before them disguised with the externals of demonstration. They do not seem to know that logic has its illusions as well as rhetoric—that a fallacy may lurk in a syllogism as well as a metaphor.’12 Bentham was insufficiently sensitive to the ways in which the attempt to ground political argument in the language of force neglects the capacity of other sorts of arguments to move people successfully. Conviction politics is not simply the preserve of the moralisers. Likewise, it is not the case that moral political philosophy is itself incapable of seeing the merit of arguments that point towards the unavoidability of unintended consequences. Just as realists can be blind to contingency, so moralists can be alive to it. Take the example of Robert Nozick, the most prominent early critic of Rawlsian political philosophy from within the discourse of rights. Nozick's ‘Wilt Chamberlain example’ was designed to highlight the inability of Rawlsian schemes of justice to accommodate the unintended consequences of cumulative instances of contingent rightful action on the part of individuals (in this case, their willingness to hand over small amounts of their own money to watch the best basketball player around ply his trade, which would generate unjustifiable inequalities of wealth—Chamberlain becomes very rich—unless the state intervenes to circumscribe their choices).13 The challenge to Rawls is to adapt his patterned view of justice to a world in which events inevitably take place that will break up the pattern. But this challenge does not come from a realist; it comes from a moralist (and a self-professed utopian to boot). There are many possible ways to push back against the apparent force of the Wilt Chamberlain example.14 A realist response would be to challenge the assumptions behind the case itself. We live in societies that enrich leading sportspeople on a scale that even Nozick might have found hard to imagine (Nozick envisages Chamberlain earning $250,000; his contemporary equivalent—LeBron James—earned more than $50,000,000 in 2015). But the players’ wealth is not simply the cumulative consequence of the unfettered choice of large numbers of people to hand over small amounts of money to watch them play. Any such relationship—between fans and performers—is mediated by vast institutional structures of commodification and exchange, which make it very hard to follow the money from individual consumers to the pockets of the superstars. It passes through the hands of many others—broadcasters, agents, advertisers, and administrators—such that the path of justice may be at best obscured and more likely undermined (recent revelations about how FIFA operates do not inspire confidence that this is a transparently just business). A further iteration of the realist response would indicate that an example drawn from the world of sports is itself a misleading one. Though polling evidence suggests that in our increasingly unequal societies it is sporting celebrities and their like who are widely believed to be reaping the most outsize rewards—on the assumption that there is at least some correlation between reward and measurable talent—most of the superrich in fact come from the financial services industry, where visible talent is much harder to identify.15 Tracing the just transfer of money in Nozick's terms from individual consumers to the pockets of bankers would be a thoroughly thankless task. In that sense, the Wilt Chamberlain example appears designed to play into our unwarranted presuppositions about the workings of the free market. It serves as a smokescreen. So realists can respond to Nozick's argument about contingency with some contingencies of their own. But so too can Rawlsians. It is possible to turn Nozick's argument on its head. He purports to grant Rawls his ideal society in order to show that no political ideal can survive eventualities for which it was not designed. But what if Nozick is granted his ideal society—his utopia—in which there is no political eventuality that cannot be justified in terms of the underlying individual rights that must remain un-breached for any social arrangement to count as just. That society will also be **subject to unforeseen contingencies**, including emergent monopolies and other market failures. Correcting for those failures **will require breaches of rights** in Nozick's terms; but **sitting back and doing nothing** will make the preservation of the conditions of justice—which includes the ability to track the distribution of wealth through a series of free exchanges—**much more difficult**. There is a real world variant of this argument that illustrates what can be at stake. Critics of the most urgent demands to address the threat of climate change tend to argue that pre-emptive responses will preclude the sort of market innovation that offers the best chance of finding a solution.16 In other words, patterned state intervention forecloses the opportunities provided by being open to unforeseen contingencies. But equally, openness to contingency **can be its own form of limitation**, if it **forecloses the opportunities provided** by state intervention in the face of failure. Putting one's faith in an unforeseen future to generate outcomes that will in due course solve the problems of the present **rules out the possibility** of an unforeseen future that **requires action in the present** to solve its looming problems. Those whose convictions blindly favour contingency and the free exchange of ideas can be as self-deceived in Weber's sense as those who want to intervene in the name of a better politics. All convictions, however adaptable, have **an edge of fatalism** to them.17

**Mere imagination is insufficient – liberation only arises from focus on putting ideas into action and explicit commitment to institutional engagement, and static conceptions of the future and apoliticism prevent that**

-this card’s about ecotopianism specifically, but I think the argument is broadly applicable to whatever else people try to say

-the card makes a sort of three-tiered argument: first, utopian visions of the world can’t be static; second, it’s not enough to imagine things because you also have to take steps to revise your visions and put them into action, moving beyond idealism; third, even if they win that they do spill over, their vision is meaningless absent explicit institutional engagement

-the latter part of the card is talking about the process by which their stuff gets coopted in the event that they actually do try to put stuff in action without paying attention to things like the dynamics of capital

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David Pepper, “Tensions and Dilemmas of Ecotopianism,” *Environmental Values*, 2007, [http://sci-hub.tw/https://doi.org/10.3197/096327107X228364](http://sci-hub.tw/https:/doi.org/10.3197/096327107X228364)

In the name of creating a dynamic of social change, progressing towards a radically alternative future, Ecotopianism sometimes produces rigid social blueprints based on principles of ‘equilibrium’ and stasis. But since these implicitly call for no further evolution, such principles are ultimately regressive, especially when grounded in idealistic yearnings for an imagined past of society-nature harmony, rather than in present material realities. Ecotopians may respond to this dilemma by endeavouring to establish progressive, ‘anticipatory’ and transformative material practices in the here and now, but these are often prone to assimilation within existing social arrangements, so may lead us back to the status quo.

The problem of static perfection

A major problem of utopia as the ‘perfect place’ is that it leaves **little room for innovation, change and evolution**. Goodwin and Taylor (1982) suggest that pre-eighteenth century utopias were static because then there was no concept of progress. But in our age a society without developmental capacity is seen as undesirable, because, as Kumar (1987) says, ‘There is no intelligence where there is no change and no need of change’. Kumar refers to how the Eloi of H.G. Wells’s Time Machine live perfectly in harmony with their environment but have lost all intellectual endeavour. In similar vein, Cooper’s (1973) fictional inhabitants of an ecotopia established on a ‘tenth planet’, escaping ecological disaster on earth, have successfully eliminated aggressive instincts, but only by creating a ‘stable’ society which is not evolving. This problem of utopias in general can be compounded in ecotopianism through a predilection for holism, where the ‘view that everything is indissolubly connected has the unacceptably fatalistic consequence that nothing can ever be changed without changing the whole given universe’ (Goodwin and Taylor 1982: 211).

Additionally, radical environmentalism abounds with problematical notions of human wellbeing founded on a natural order that has stabilised around an equilibrium state – a ‘homeostasis’, meaning to ‘keep the same’ (Russell 1991). From the Blueprint for Survival to Gaia theory, there is concern about important ecological ‘laws’ apparently requiring stability and steady state for ecosystems health (see Sale 1985, Devall and Sessions 1985), which by extension demand ‘balance’ and harmony with nature for social wellbeing (Bookchin 1990a). Milbrath et al. (1994: 425) epitomise the environmentalist view that it is ‘perilous for us to perturb those systems’, while Devall and Sessions infer that ‘not do’ should become a guiding social principle.

Unfortunately such sentiments can create what is, for a social change movement, the paradox of ‘**deep dislike of dynamism, uncertainty and change**…ʼ (Bramwell 1994: 177, 205). Indeed, Prugh et al. (2000), among others, have accused ecotopias of demonstrating **static, frozen social structures**, as well as **lacking ‘politics’** and the emergent properties of real human societies. Associated with these accusations are fears of how blueprints of a ‘perfect’ steady state may encourage unhealthy totalitarian repression of deviation and dissent.4

Such criticisms are not always deserved, since at least some ecotopianism does admit a measure of dynamism, uncertainty, change and deviation from static perfection. Callenbach’s (1975) Ecotopia itself contains political dissenters, some disturbingly aggressive war games, urban ghettoes and other ‘imperfect’ features. And Kirkpatrick Sale’s work on bioregionalism does concede that because of the key biological principles of diversity and self-determination ecotopia would be a changing society, likely to contain imperfections. So some bioregions in his ecotopia might not heed values of democracy, equality, freedom, justice, and ‘bioregional standards’. This being so, Sale seeks a system which will work even if not everyone in it is good (more on this problem below).

Again, Bernard and Young’s (1997) review of actual community experiments in sustainable development emphasises the sustainability utopia as imperfect and dynamic. Sustainability in its fullest sense, they say, exists nowhere and may never exist: a **destination not to be reached, but it is the journey itself which is important**. When thus conceived, ecotopian visions **veer away from highly-defined blueprints**, towards constituting merely a ‘navigational compass’ (de Geus 1999). They jettison final and static spatiotemporal utopian forms as unachievable – or, if achieved, still unstable and transitional. This means that utopianism must concentrate on the underlying processes needed to move towards a final state which will remain hypothetical (Harvey 2000). Utopian works that focus on the dialectics of making a new socio-ecological future in worlds which are still ‘messy’ include those of LeGuin (1975), Piercy (1979) and Robinson (1996).

Harvey opposes what he sees as traditional ecotopianismʼs tendency to romanticise an idealised nature, seeing ‘natural laws’ as overly restrictive of human activity. Harvey’s perspective resonates with Marxism’s critique of utopian socialism (Lukes 1984), insisting that ecological utopianism must **reject idealism** and concentrate instead on **transforming into action the material forces working within existing society**, if it is to be truly emancipatory. So ecotopia should reflect the **dialectic between the existing and the desired socio-ecological conditions**, seeking to subvert what exists and creating transgressive spaces and ‘transitional forms’.

As I have suggested, the truth seems to be that ecotopianism swings from one side to another of this materialist-idealist duality. I have shown elsewhere (Pepper 2005) that bioregionalism, and deep ecology in particular, sometimes retreats from the material struggles of the modern world, instead falling back on a romantic future primitivism. Sale (1985: 478), for instance, urges a return to premodernity on grounds that old peoples ‘know the way of nature best’, while Bowers (2003) compiles a list of prerequisites for a sustainable future by looking at the ‘morally coherent and ecologically responsible’ communities of the Apache, Quechua, Inuit, Aboriginal etc. The Planet Drum Foundation, initiated in 1973, holds bioregional congresses featuring ‘earth connecting native American ceremonies’, echoing the tree worship and war game rituals in Callenbach’s novel, and deep ecology invocations to ‘seek inspiration from primal traditions’ (Devall and Sessions 1985: 97) and ‘dance … with the rhythms of our bodies, the rhythms of flowing water, changes in the weather and seasons and the overall processes of life on earth’ (p. 7) needing fewer desires and simpler pleasures.

On the other hand there are examples of ecotopianism seemingly more engaged with the modern world. The seminal Blueprint for Survival (Goldsmith 1972), for instance, gave much space to detailing the transitional processes and forms thought necessary in the journey from what is recognisably today’s world to the unfamiliar world of ecotopia. Indeed, Callenbach (1981) presents a whole volume devoted to transition from the present to ecotopia, seeing this transition as triggered by contemporary processes of ecological degradation that, alongside economic globalisation, produce crises in human welfare. Callenbach draws on a pervasive theme of contemporary America when he suggests that the struggle of small communities against state control and the dislike of ‘ordinary’ people against ‘bigness and greed’ will be significant in provoking ecotopiaʼs emergence. Sale (1985: 179), too, roots his bioregional vision in what he (like many anarchists) claims to be ‘thoroughly expressive of the basic trends of the 20th century’: that is, distrust of bigness, breakdown of the nation state and of the industrial economy. Bioregionalists, he asserts, call for nothing that is not already here today (though whether he or other ecotopians have accurately diagnosed contemporary ‘basic trends’ is of course arguable).

However, when ecotopianism does swing towards the ‘concrete’ and away from abstract fantasising, to engage with the contemporary world, it faces a different sort of dilemma, that of **assimilation into the culture to which it is supposed to run counter**. As such it may **lose transgressive impetus** because it **no longer presents any serious challenge to the status quo.**

Transitional forms and assimilation

This dilemma is of more than academic interest. It is germane to the active involvement of ecotopians in what they consider to be ‘transformative practices’ and ‘transitional forms’, i.e. anticipatory practices in the here and now, reflecting Marx’s idea of ‘immanent critique’ (Hayward 1994). Such practices constitute a familiar liturgy – from local community initiatives for organic farming, micro credit and banking to city farms and neighbourhood schemes for recycling and energy conservation; from worker cooperatives to local employment and trading systems (LETS), from the Mondragon collectives in Spain5 to the Second Economic Model in W. Massachusetts;6 they have all been read, at one time or another, as moving us towards ecological utopia (see for example Douthwaite 1996, Dauncey 1999).

For in ecotopianismʼs characteristically anarchistic analysis, such institutions and practices prefigure the desired society. The analysis reflects Martin Buberʼs contentions that in utopian society there cannot be dissonance between means and ends (so violence or vanguardism, for instance, cannot be countenanced as means to secure a non-violent, non-elitist society), and there should be continuity within revolution . This implies that the method of revolution must be to set up features of the desired society in the here and now.

Ted Trainer (1998) typifies these arguments from a deep green perspective. He stresses how key ecotopian practices and institutions (self sufficiency, small-scale living, localised economies participatory democracy and alternative technologies) already exist in the ‘global ecovillage movement’, a network of intentional communities, city neighbourhoods, producer/community coops and local currencies which constitutes part of the implicit transition strategy of building post-capitalist society in existing society. They are ‘grassroots movements of hope’ (Fournier 2002).

Socialists often reason similarly. Harvey (1996) for instance describes money as the most important expression of spatio-temporality in contemporary society: its social power currently depending on a hegemonic territorial configuration constituting a system of privilege and social control. From this he argues that because LETS have new spatial-temporal characteristics (currencies are invalid outside a local area for instance, see Meeker-Lowry 1996) their adoption enables alternative, non-hegemonic social practices to be established

However the dilemma of such ‘transitional forms’ is that in place of transgressive potential they could as **easily become an accepted element of the status quo** – for reasons detailed in the Marxian critique of utopian socialism. For **inasmuch as their supporters** often **reject conventional politics** – Trainer for instance approvingly describes the global village network as ‘theoryless and apolitical’ – and may underestimate the extent to which contemporary material forces set the terms of mainstream discourse, they often exhibit **false consciousness**. False consciousness imagines that (a) by appealing to reason and ‘common sense’ these transitional forms and practices set an example which the masses will want to follow, and (b) that if they in fact grew to challenge seriously existing power hegemonies, that challenge would not be ruthlessly suppressed.

A potential danger of this lack of realism could be **blindness to the risks of assimilation** into the mainstream culture. Yet we often see how ostensibly ‘transitional’ practices and ‘alternative ‘arrangements can **easily become institutionalised into the status quo**: so that, for instance, some LETS schemes now pay national taxes (Fitzpatrick and Cauldwell 2001); local produce, ‘farmers markets’ and ‘fair trade’ now feature in many supermarkets; what was once regarded as radical technology (i.e. renewables, see Boyle and Harper 1976) becomes a major platform for continuing growth of the major oil companies, etc. Furthermore, inasmuch as they permit their members to survive financially in the context of conventional society, many such ‘alternative’ enterprises decrease the state’s obligation to supply adequate social security arrangements – effectively, some might say, **prolonging the legitimacy of an existing economics which inherently creates social exclusion**. They become, then, **counter-revolutionary**.

An allied danger is that ‘transitional’ form, rather than process, becomes seen as most important. As Carter (1996) reminds us, most ecotopias presume that self-sufficient communes and worker cooperatives intrinsically benefit the environment because of their small scale, potential contribution to quality of life, and imagined concern about local community interaction with environment. Yet this is all highly questionable – small scale is not inherent to coops for instance, and neither do they necessarily exemplify democracy, inclusiveness or environmental concern. Frequently they are veh**icles for alienation through self-exploitation** as they **strive to compete in a capitalist environment**. The anarchist cooperatives in Mondragon have experienced wage hierarchies, a management culture, downsizing and ‘rationalisation’ in order to become successful players in the global economy (Kasmir 1996). Carter insists that form of itself is not crucial, coops being a vessel into which almost any meaning can be poured.

In reality it is the context of potentially ‘transitional’ forms that may be key. As Gare (2000) argues, they must be set within a **culture of non-capitalist values and a clearly radical social change agenda**. This is why Fotopoulos (1998a), in arguing for transitional forms, nonetheless opposes Trainer’s position for its lack of clear goals for systemic change. An **unambiguous programme for** such **change** – ultimately to a stateless moneyless economy, says Fotopoulos – is **necessary** if an ecotopian inclusive democracy is to be established.

**We should be held responsible for unintended consequences – almost everyone wants their actions to do good which means the only way to choose what to do depends on evaluating consequences**

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(David, “Beyond good and evil: Ethics in a world of complexity,” International Politics Vol. 51, 4, 441–457)

Good and evil, and the social judgements connected with these concepts, cannot exist in a world without fixed structures of meaning derived from the separation of the subject from the world. Rather than moral judgements based upon fixed frameworks of right and wrong, political actors are more likely to evade judgements allocating responsibility and less likely to take sides for or against a particular policy on the basis of political principle. This is reflected in the rise of relational ontologies, such as pragmatism, new materialism or post-humanism, which suggest that any transcendental framing of right and wrong is inherently problematic. If we can no longer stand apart from the world, then we are left only with immanent understandings of complex chains of emergent causation. Rather than good and evil as metaphysical or normative constructs, good and bad forms of interconnection are revealed through their practical consequences as relational ontologies trace outcomes back through concrete social processes. Deleuze (1988) in his ‘practical philosophy’ captures this well:

… Ethics, which is to say, a typology of immanent modes of existence, Ethics overthrows the system of judgement. The opposition of values (good-evil) is supplanted by the qualitative difference of modes of existence (good-bad). (p. 23)

In the world of **immanent chains of connection**, social outcomes reflect modes of being, either ‘good’ modes of being, which reflect upon embedded affinities and connections, or ‘bad’ and unreflective modes of being, which **do not reflect on the effects of actions or inactions**. In a globalized world of **unintended consequences** of interconnection, the appearances of the world enable us to reflect upon the ontological necessity **of reflexively learning from bad modes of social being**. Here the appearance of ‘evil’ seems to enable just such reflexive learning, indeed to impose reflexivity as an ethico-political social necessity. Evil thus provides a framework of experiential learning but only on the basis of understanding evil not as an exception to the norm but by inversing this reasoning to understand evil as revealing an underlying truth or ontological reality in its emergence.

This understanding of evil as an **emergent causality**, a product of the unintended effects of societal interconnection and association, was provided by the Breivik case. The treatment of Breivik provided a snapshot of a world beyond good and evil, where evil is considered as much less the ‘other’ to the norm than as entirely imbricated within it. Breivik illustrated an ‘evil’ that was entirely socialized, understood as immanent beneath the social surface and as generated by a problematic social milieu or socialization process. The response therefore was similar to that of post-Nazi Germany, of engaging in a correcting societalizing process of social education (or de-nazification). The Breivik trial itself was less about proving the guilt or innocence of Breivik, there was no doubt about this, but about ‘sending a message’, a demonstration of the democratic consensus and its importance to Norwegian society, along with the gory and in-depth descriptions of the horrors that can occur if there is a fault in this process. In order for Breivik’s case to perform this ethical work of community construction in the milieus through which the problem was seen to arise, it was vital that Breivik’s ‘evil’ was understood to be not the arbitrary, criminal or insane exception to the norm but rather as an emergent social or societal product. The evil of Breivik, much like that of Eichmann in Arendt’s reading, was societalized or banalized precisely because it was no longer possible to understand it as an isolated act of an individual. The individual may still be legally responsible, but is no longer considered to bear the full moral responsibility – the moral responsibility is that of society not the individual. **Evil is a social product** – a problem that cannot be ‘othered’ or excluded from the norm. This approach is so dominant that a typical example of the ‘lessons of Breivik’ goes thus:

The onus falls on everyone in society to raise their voice a bit more often to correct that borderline racist in the pub or that colleague spreading bigoted nonsense about Muslims or immigrants at work. Once the terrible grief has eased in Norway, one of the conclusions may well be that the ‘it couldn’t happen here’ complacency of a civilised country that did not prepare properly and was too tolerant of the sentiments of the likes of Breivik was a factor in failing to stop the horror…Well, it did happen there. And it could happen here too if we do not take adequate steps to prevent the growth of extremism in all its forms. (Knott, 2012) The fact that there is **no clarity** or consensus on exactly how or which milieu-shaping **institutional practices** are at fault or stand in a **causal relationship** to Breivik’s acts is not a barrier to the perceived necessity of ‘learning the lessons’. These lessons are those of governance: of societal intervention as a ‘milieu-shaping’ project understood to be a preventive and precautionary exercise of adapting societal institutions to prevent the repeat of humanitarian tragedy. This is a process driven by the lessons of necessity, and therefore to be taken across Norwegian society itself, ensuring to include every avenue of societal shaping-influence, from schools and workplaces to places of worship and the media. And, as the above quote illustrates, the democratization of evil does not stop at the Norwegian border, in a globalized world, Breivik teaches the need for ‘everyone in society’ to take moral responsibility for the environmental milieu in which social values are inculcated.

To explain how the democratization of evil works, it is important to recall a point emphasized in the work of Hannah Arendt on how agency works in relation to ‘guilt’. As Arendt (2003) noted, when we claim that ‘we are all guilty’ we are actually expressing ‘**solidarity with the wrong-doers’ rather than the wronged** (p. 148). As wrong-doers, we are then ethically called upon to reform ourselves and are unable to distinguish ourselves from the world in order to pass judgement upon the acts of others. A striking example of how this dispersal of responsibility works in constructions of globalization and complexity is in relation to capitalism or market relations. In modernist framings, political solidarity was often demonstrated in understanding a common cause of struggle against market relations and its enforcement through the coercive political power of capital. In today’s understandings of embedded associational responsibility for the unintended consequences of our actions, we are more likely to see our lifestyle or consumption choices as responsible for inequalities, conflict or environmental problems in other parts of the world (see, for example, Cheah and Robbins, 1998; Dobson, 2003). However, **it needs to be stressed that this reflectivity plays an important role in providing meaning and political purpose when modernist structures of social mediation no longer exist or seem to be hollow remnants.**

In an age of political complexity, when it is ‘easier to imagine the end of the world than the end of capitalism’ (Jameson, 2003; Žižek, 2011), responsibility is recast or internalized, displacing capitalism as the problem through vicariously seeing ourselves as responsible. Thus, capitalism is understood as merely a complex emergent process of exchanges in which we are to differing extents embedded and therefore indirectly responsible. In an age where the overthrow of capitalism seems unimaginable, capitalism is transformed as the sociological vehicle of connection, displacing the conscious and direct chains of public political connection. In fact, a substitute sense of community and of social interconnection is gained through socially reimagining market relations as empowering: enabling **self-reflexive agency to operate in a complex world.** It is precisely through this shift of political responsibility, from social structures and political frameworks external to ourselves, to the recognition of our own indirect social or societal responsibility, as complicit through our own choices and actions, that onto-ethics operates.

**Self-reflexive ethics redistribute responsibility and emphasize the indirect, unintended and relational networks of complex causation**. Collective problems are reconceived ontologically: as constitutive of communities and of political purpose. This is why many radical and critical voices in the West are drawn to the problems of ‘**side effects’**, of ‘**second-order’ consequences** – of a lack of knowledge of the emergent causality at play in the complex interconnections of the global world. The more these interconnections are revealed, though the work of self-reflexivity and self-reflection, **the more ethical authority can be regained by governments and other agents of governance**. We learn and learn again that we are responsible for the world, not because of our conscious choices or because our actions lacked the right ethical intention, **but because the world’s complexity is beyond our capacity to know and understand in advance**. The unknowability of the outcomes of our action does not remove our ethical responsibility for our actions, **it, in fact, heightens our responsibility for these second-order consequences or side effects.** In a complex and interconnected world, few events or problems evade appropriation within this framing, providing an opportunity for recasting responsibility in these ways.

The new ethics of **indirect responsibility** for market consequences can be seen clearly in the idea of environmental taxation, both state-enforced through interventions in the market and as taken up by both firms and individuals. The idea that we should pay a carbon tax on air travel is a leading example of this, in terms of governmental intervention, passing the burden of such problems on to ‘unethical’ consumers who are not reflexive enough to consider the impact of package holidays on the environment. At a broader level, the personalized ethicopolitical understanding that individuals should be responsible for and measure their own ‘carbon footprint’ shifts the emphasis from an understanding of broader inter-relations between modernity, the market and the environment to a much narrower understanding of personal indirect responsibility, linking all aspects of everyday decision making to the problems of global warming (see, for example, Marres, 2012). The shared responsibility for the Breivik murders is not different – ontologically – from the societally shared responsibility for global warming or other problematic appearances in the world. Through our actions and inactions we **collectively constitute** the frameworks in which others act and make decisions – failing to raise our voice against ‘borderline racism’ or extremism in a bar makes us indirectly responsible for acts of racism or extremism in the same way that failing to save water or minimize air travel makes us indirectly responsible for the melting polar ice caps.

**Afrofuturism is cruel optimism – it sustains the fantasy of progress and improvement without accompanying action, which causes burnout rather than renewal**

**Dila 18** – acclaimed writer, filmmaker, and social activist. Dila’s works include a collection of speculative short stories, *A Killing in the Sun*, and the sci-fi film *Her Broken Shadow*.

Dilman Dila, “The trouble with Afrofuturism,” *Dilman Dila*, 14 February 2018, <https://www.dilmandila.com/the-trouble-with-afrofuturism>

Last year, I gave my work-in-progress novel to test readers. Two Ugandans who read it are not particularly fans of SFF, they are just good readers who enjoyed my earlier book, A Killing in the Sun, whose stories mostly sit in a grey area between genres, which is why the title story was shortlisted for a major literary prize. I aimed for the same in this book and both readers said they enjoyed it, very much, especially as it is rooted in a world they know. But **they thought it was childish**. ‘Why?’ I asked. ‘The afrofuturism thing was too much,’ one said. She failed to relate to the techno-fantasy, and she echoed the lead actress of a short film I made last year; ‘**This can’t happen in Uganda.**’

If a reader needs to suspend belief to enjoy a story, **a writer has to live in the world of the story** to enjoy writing it. I think it has given me a ‘schizophrenic’ condition. I put that word in quotes so as not to assume I share an experience with schizophrenics. I discovered this condition in 2010 while working on a one-character screenplay about a radio-presenter stuck in a room, talking and talking and talking. The idea has obsessed me since, and I ended up telling a similar story in Her Broken Shadow, but it’s something I’ll be revisiting soon.

At that time, I was in a sweltering room in Nepal. Humidity made me feel as though I had a second layer of skin. A fan rattled overhead, the noise it made did little to assuage the heat. I was fretting over the structure of the script, the plot points and character arc, since I was a novice and fussed over such things. Suddenly, I teleported into the character’s room, in Kampala. I no longer felt the heat or humidity. The fan’s noise became the drone of bodabodas. The loud chatter of Tharu women winnowing rice, in a neighboring compound, became the yelling of taxi touts. The room was dark because the character had sealed himself in, the only light came from a table lamp, revealing a makeshift studio with a battered laptop and a mic made from scrap. I listened as he made jokes and played oldies. Then, another person crawled out from under the table, and a third popped up on the bookshelf. I did not know where these two came from. I snapped out of it, surprised and angry, plunged back into the hot, humid terai, and I jumped off my chair and stamped my feet as I shouted aloud; “I want only one character! Not effing three!” I never wrote that script because the other two characters did not go away.

Since then, **I’ve lived in two universes**, the real world and the mind-world which shifts according to whatever fantasy is in control. Of course, I can tell the difference. The line between the two is clear. Yet **it hurts, for the mind-world is sometimes so strong that I can feel it.**

For the last few years, the dominant fantasy has been that something turns Africa into, well, a utopia, for lack of a better word. A place where things work, with no poverty as we know it, no colonialism, where nobody feels inferior because of their (dark) skin color. It’s become my favorite daydream, and I’ll leave you to imagine why **it hurts when I snap out of it.**

Often, the catalyst for this change is a genius whose scientific inventions gives humans tools that respect nature, and which can be replicated with resources that are easily or cheaply available in any community. Inventions that destroy capitalism. Sometimes, ancestral spirits guide the genius. I think this is becoming a trope in works of African science fiction, partly because to many Africans the supernatural is alive and breathes alongside smart phones and robots and flat screen TVs. Sometimes, the genius has access to indigenous knowledge and technologies that have been kept a deep secret all these years (another emerging trope). The idea is that colonialism did not destroy everything, something survived and now arises to bring hope.

Here are a few examples of these technologies. A road making machine that’s as cheap as a bicycle and that any community can build from scratch to make an all-weather road. Solar panels, again that any community can build from scratch using resources in their backyard. Sometimes it’s a plant that makes a wonder-fuel (another emerging trope, linked to herbal medicine). It grows in the backyard. If you want to cook lunch, you simply pluck off and process a few leaves using sunlight; turning photosynthesis into energy we can use. The fantasy that wakes me up each morning is a smart phone-like device, which does not need a service provider to make calls or access internet, yet it is cheap enough that any peasant can afford. **Such a device could make the inventor an instant billionaire**, and their country’s wealth would increase tremendously overnight. Maybe the value of the currency shoots through the roof as demand for it rises. **I’d love to wake up one morning and discover that the shilling is now the same value as the dollar** 🙂

Whenever I step out of my house and I’m swallowed up in clouds of dust from the dirt road, or whenever I ride a boda on a muddy road full of potholes, **I curse the authorities for not using the road making machine**. I curse them for taking huge World Bank loans and contracting all road works to China. When I the price of cooking gas goes up because the shilling has lost value, **I wonder why I can’t get seedlings of the wonder plant**. When the government shuts down the internet or media-houses, I know they are suppressing the device for if they allow it, they lose control. I become convinced that they are forcing the inventor to sell it to something like Google or Apple because these corps want to remain in total control of what people see on their devices, and dictators rely on these corps to maintain control.

Whatever the scenario**, I can’t see our leaders having the guts to bankroll such inventions**, partly because **stories need conflict**. Mostly because of reality. Our leaders would rather remain puppets of global corporations and Western or Chinese governments, to stay in power.

I’m not a pessimist. It’s just that the future is **intricately linked to the present and the past**. Look at the Arab spring. It brought a lot of hope, but where did that end up? Some people were determined to see it fail, and ensured we have Libya, and Egypt, and Syria. Look at South Africa, with Mandela selling out his people, with Zuma and the ANC’s new choice who has something to do with massacre of miners. Nigeria has ridiculous long queues for fuel, relies on plastic-bag water, and its generators hum a constant reminder of the leadership’s failure to fix things. Ethiopia is firmly in the grips of a dictator, while Kenya… well, it made a huge step forward following the end of the Moi-era, and now has made ten steps backward with Uhuru.

Recently, someone shared the front page of The Daily Nation. The headline was something about Raila vs Uhuru, and it symbolically overshadowed a more important story, about doctors re-attaching a boy’s severed arm. The kind of story that, if told more often, could make afrofuturism appear much closer to possibility, and then readers would not tag it as ‘childish’ or say things like ‘this can’t happen in Uganda.’ When the Ugandan government launched Vision 2040, people laughed in ridicule. When Makerere made an EV vehicle, people were skeptical and suggested Makerere merely assembled the vehicle. When the President launched a solar bus, celebrations were muted, because people could not see beyond his greed. Just as **celebration** of the arm-re-attachment **is muted because people see what is happening in politics and they get worried.**

**It hurts to daydream of better things. It hurts even more to write about it**, for at some point I begin to feel like afrofuturism is becoming something like a **mind-control drug**, something like a religion that makes you **endure a horrible life with promises of a paradise after death**.

**Afrofuturism is bound to fail as long as it conforms to a linear notion of time – that dooms it to repeat status quo inequalities rather than being liberatory**

**Opperman 16** – doctoral candidate whose work bridges the fields of Africana and Environmental Philosophy. She plans to defend her dissertation, “Race, Ecology, Freedom: Climate Justice and Environmental Racism,” in Spring 2020. The work draws on Wynter, Fanon, and Hartman to critique liberal framings of environmental and climate justice.

Romy Opperman, “‘Born in Flames’ and the No Future of Afrofuturism,” *Another Gaze*, 15 September 2016, <https://www.anothergaze.com/born-in-flames-and-the-no-future-of-afrofuturism-lizzie-borden/#_ftn2>

While Born in Flames has been widely celebrated as an afro-futurist classic, to which we might turn for an uplifting narrative of struggle and hope, we should resist the increasingly popular and popularized reading of afro-futurism as ‘a utopic imagining of otherworldly racial harmony explored through seventies sportswear and Swarovski shimmers’ – not merely because such a reading is superficial, but because it is **complicit in the political hegemony of time** that is challenged in the film[2]. Revisiting the film from our own vantage point suggests that the ‘future’ in afro-futurism can **no longer be read as a utopic horizon** to be reached through a playful progression on the same temporal continuum. Instead it might better be understood to refer to the politicization of time that works to explode this continuum altogether[3].

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Born in Flames opens with an official party announcement of the ten-year anniversary of the first ever Socialist Democrat revolution in the USA. Since the revolution has already occurred, the doxic temporality is one in which radical rupture or alterity is no longer expected. Instead, evoking the rhetoric that decked out neoliberalism’s triumphant destruction of the Berlin Wall, the official consensus is that all the citizens of this one-party alternative reality should hope for is a progressive self-perfection over time of the party and its system. The official line is that gender parity has already been achieved, yet this is undercut through the vision of the film’s women, and in particular its Black queer women. The viewer is inundated with images of continued systemic misogyny and oppression. Through the splicing of documentary-like footage, clips of (fictional) official media outlets, surveillance footage and pirate radio, we witness over the course of the film the characters’ collective realization that the channels of accepted politics will not yield anything like meaningful change. The way in which our vision of the film’s events is often mediated through the optic of power, which monitors and attempts to neutralize anything that aims at overthrowing that power, only reinforces the point that democratic dialogue and routes are not only ineffective but in fact serve to mask the mechanisms of the world which these women are trying to resist.

In fact, the splicing of heterogeneous and heavily mediated material throughout the film (such as the COINTELPRO-like clandestine surveillance of these characters by the FBI), or the flat image of Adelaide’s face that is reproduced on the front pages announcing the fabricated narrative of her suicide) is integral to Borden’s temporal vision. Rather than undoing the uncompromising politics of time that the vision of the Black female queer gives us, they work to politicize the apparent neutrality of the film’s present, which despite its apparent futurity strikingly resembles our own. It is this similarity that lends itself to what I understand to be a politics of time, which is not only a politics that resists a particular feature of the present, but perhaps more significantly resists the temporal understanding that undergirds and reproduces particular features of the present.

By adopting the various optics and media of power, Borden is able to show that despite apparent ‘progress’, ‘equality’ and ‘tolerance’, **barely concealed mechanisms of control continue to operate**. In Born in Flames, regardless of the formal occurrence of ‘revolution’, we are privy to the brutal and calculating strategising of power. Indeed, the characters’ initial attempts at dialogue and more acceptable forms of protest are met with what almost becomes a refrain: ‘There are problems, we know. But things are so much better than they were before. Things are not going to happen overnight. It’s important that the party remains strong so progress can be made.’ The soporific effect of this chorus, however, quickly wears off for those who are woke – and by seeing the machinations of power, the viewer is also woken to the suggestion that **a revolution occurring along the lines of the present promises only more of the same**. In the words of Audre Lorde, ‘the master’s tools will never dismantle the master’s house.’[4]

The viewer shares in the protagonists’ despair and rage at having to bear the struggles faced by their mothers and at the frustration they feel at coming up against the white liberal feminists’ disavowal of their struggle as ‘separatist’. Despite and in response to pacifying promises of progress, we witness through radio, radical spaces, and (militant) direct, the birth of a view akin to the one Michele Wallace expressed and that the radical Black queer feminist group the Combahee River Collective took up in (1978):[5]

‘We exist as women who are Black who are feminists, each stranded for the moment, working independently because there is not yet an environment in this society remotely congenial to our struggle – because, being on the bottom, we would have to do what no one else has done: WE WOULD HAVE TO FIGHT THE WORLD’[6]

Borden’s isolated and disempowered women band together to do precisely this. Far from remaining a separatist group they try to form lines of allegiance with male workers, urging them to strike and struggle together in solidarity. Refused and rebuffed by lame excuses that display cowardice and self-interest, they get in formation with the profound awareness that ‘it’s already, it’s that time’.

If, then, the task is ‘to fight the world’, the question that follows is how one dismantles the world – both the planetary scale of a hegemonic logic, and the way in which this logic gives coherence and viability to experience and thought in the present. In a way this is an almost unthinkable question, since it requires conceptualising an attack on the dominant mode of thought: that is, fighting the world requires such a radical inversion of thought that it is scarcely imaginable.

It is for this reason that Borden’s film can only begin to visualize this question. While we see the importance of friendship, solidarity, autonomous pleasure, communication and militancy, what is required for total revolution exceeds this. Borden’s film attacks the apparently depoliticized politics of time, which attempts to foreclose in advance all meaningful alterity and rupture. Like ‘the end of history’ that announced neoliberalism’s current global hegemony, the time after the revolution is systematically and ruthlessly anti-revolutionary. Not only are the women of the film collectively ‘tired of waiting on promises because they’ve been waiting too long’; this impatience also means an exit from the temporality in which they’ve been entombed. The characters’ refusal to wait for a future that is only a death sentence – more of the same – is at the same time an affirmation that explodes the logic of continuity and progression.

The final image of the film, in which a white male news broadcaster is interrupted by the destruction of the World Trade Center in a glittering column of fire, etches itself into our minds – and not only because it now seems to eerily prophecy the hyper-replicated image of the 9/11 attacks. More importantly, it tempts the viewer to identify with a radical move that would decisively strike at the twinned phalli of (what was then) capital’s latest incarnation of global neoliberal imperialism, while at the same time undercutting the view that one such act of spectacular violence would be adequate to the task at hand. As the sparkling image of the explosion of one of World Trade Center’s communication towers closes the film, it simultaneously opens a new politics of time, which is not that of a regulated sameness nor a teleologically governed revolution but something unimaginable: the end of the world, and therefore the inconceivable destruction of the system of oppression that immiserates everyone.

Viewed from this angle, the title of the film and the name of Phoenix Radio (the crucial vehicle for Honey’s simultaneously dulcet and incendiary words) take on more nuanced meanings. Endlessly arising from its own fiery destruction, the phoenix mirrors the endless repetition of Black women’s suffering and resistance. But by acknowledging this repetition, the symbol also wages a critique against a future-oriented and progressive temporality that serves only to reproduce its own coordinates of power. The sequence of Adelaide’s death before the protagonists’ attack on the World Trade Center seems to suggest an almost messianic narrative of time, in which her death acts as the necessary sacrifice for collective liberation through the apocalyptic means of the end of the world. But there is a contradiction here, since to fight the world means to rupture the coherence, continuity and promises of such established narratives.

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Borden’s decision to use footage from then-contemporary New York, rather than the futuristic aesthetic we might expect in a nominally dystopian film, suggests a **repetition of the inequalities and injustices of the present into the future ad infinitum**: the future-oriented sacrifice of the revolution has resulted in a future that is no future, but looks almost exactly the same as now. Through the similarity between the position of Black women before the fictional revolution, the film’s post-revolutionary present, and the viewer’s own time (both when the film was released and significantly in 2016), the progressive and linear model of time – which works by producing and orienting hope towards a future always yet-to-come – is shown to be a **fiction that has very real and damaging effects** observable both in the film’s present and our own today. That is, by exposing the similarity in **repeating patterns of inequality and violence**, the film shows that a future-oriented politics of time is both hollow and contingent.

Thus as Stephen Dillon has noted, the film preempts the critique of future-oriented politics that has been articulated in the queer negativity of theorists such as Lee Edelman, as well as the pessimism of afro-pessimism[7]. Indeed, reading the film now, from its own future-present, might twist it further out of joint. For the film not only remains significant as a dramatization of the Women-of-Color and Black feminist struggles of its own time, but also as an articulation of something akin to a kind of queer afro-pessimism, on which ‘the structure of the entire world’s semantic field is **sutured by anti-Black solidarity’**. From this angle the movement of the film towards joyful destruction becomes even more essential, and it takes on world-annihilating resonance in such a way as to ‘refuse solution-oriented, interest-based’ ends[8]. While Calvin Warren has suggested recently that the Black queer is outside of ontology and unimaginable because of its non-human status as the object of a kind of hyper-violence, Born in Flames allows us to add that this unimaginable status is also due to its potential to rupture the world.

Despite the film being widely cited as an example of the internally heterogeneous aesthetic movement referred to as afro-futurism, then, the politics of time that the film opens up through the lens of the Black female queer indicates a point at which afro-futurism meets afro-pessimism, causing us to reassess the very idea of ‘future’ in the label of afro-futurism. Born in Flames suggests that the future referred to is one that **defies the register of linear time**: that it is an **unthinkable future, not simply a repetition of the present**; that a future worthy of the name that cannot be plotted through linear continuity. Instead, such a future is a kind of unthinkable moment that requires the **reorienting of our desire away from the future** as it is currently presented to us, and towards the impossible project of a complete re-envisioning of time.

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**[C]---Learning about antitrust law is key to making contingent changes---domination is not inevitable, but action can solve it**

**Greer and Rice 21** – Jeremie Greer and Solana Rice are Co-founders and Co-executives of Liberation in a Generation, a national movement-support organization working to build the power of people of color to transform the economy.

Jeremie Greer and Solana Rice, “Anti-Monopoly Activism: Reclaiming Power Through Racial Justice,” *Liberation in a Generation*, March 2021, pp. 3-14, https://www.liberationinageneration.org/wp-content/uploads/2021/03/Anti-Monopoly-Activism\_032021.pdf.

Unfortunately, **though the start of the 20th century saw robust anti-monopoly government action, the government rapidly retreated from anti-monopoly enforcement in the second half of the century**. Since, the federal government and the federal courts have aided—not prevented—the exponential growth in monopoly power in nearly every sector of our economy, including technology, telecommunications, food supply chains, banking, and health care. In 2015, for example, the US saw a record number of corporate mergers, totalling $3.8 trillion in merger and acquisition activity.5 Mergers that year involved massive companies, such as Time Warner Cable, AnheuserBusch, and Berkshire Hathaway, becoming more massive. In 2020, T-Mobile—the third-largest wireless carrier in the US— acquired Sprint,6 and Morgan Stanely acquired online stock trading company E-Trade.7

The economic problems created by monopoly power have been widely studied, and many solutions to curtail it have been developed by experts. Unfortunately, **like so many large-scale** and so-called “**race-neutral” policy efforts, anti-monopoly policy ideation and implementation have left people of color behind**. In researching this paper we found limited research or policy ideation on the impact of monopoly power on people of color. We believe that the absence of grassroots leaders of color in anti-monopoly policy conversations can be attributed to this disconnect.

It is critical that grassroots leaders of color are positioned to lead on anti-monopoly policy, as they are uniquely positioned to understand its impact on people of color at the household, community, and societal levels. This gives them a unique perspective in policy ideation efforts that should be valued and validated. These leaders also possess the unique skills to mobilize the people and public power that are necessary to force the government to reclaim its historic role of reining in runaway corporate monopoly power.

We at Liberation in a Generation believe that the power to change our economic systems rests with the organizers of color who are building the political strength of communities of color. **Anti-monopoly research and advocacy need to better quantify, center, and reflect what people of color are experiencing and the ways** that **they are being harmed by monopoly power’s reach**. These efforts should also better connect anti-monopoly policy and advocacy as tools to advance the existing priorities of leaders of color, such as the Green New Deal, Medicare for All, closing the racial wealth gap, and a Homes Guarantee. This paper aims to contribute a major step in the long journey of bridging the divide between anti-monopoly researchers and policy advocates and grassroots leaders of color. The first step on that journey is knowledge.

Recognizing that anti-monopoly work is a new policy issue to many grassroots leaders of color, this paper will serve as a primer to 1) educate grassroots leaders on the issue of corporate concentration, 2) connect the issue to racial justice, and 3) recommend a path forward for grassroots leaders as well as the researchers and advocates who need to embrace them. Our hope is that this paper provides a foundation of knowledge that grassroots leaders of color can use to build race-conscious solutions and mobilize for action to rein in runaway corporate monopoly power. To that end, the paper is organized into six sections.

SECTION 1 Monopoly Power Is Corporate Power Magnified and Maximized

In 1975, millions flooded theaters to see the blockbuster thriller Jaws. The story follows a police chief in a small resort town as he risks his life to protect beachgoers from a monstrous man-eating great white shark.

Monopolies are a lot like the shark in Jaws. While enormous, ruthless, dangerous, and scary, the movie’s monster is just a shark, and the police chief uses tools and community to defeat it. Comparatively, while also enormous, ruthless, dangerous, and even scary, monopolies are just corporations, and we, together, can confront them. Their massive power controls the wages we earn, the prices we pay, and the actions of the politicians who are supposed to represent us in DC, the statehouse, and city hall. In a representative democracy, we the people are at the top of the food chain, and it is within our power to make these monopolies fear us— and end their existence in the first place.

Grassroots leaders of color are highly experienced and uniquely skilled at challenging corporate power, and these capacities can and should be used to curb monopoly power. For example,8 the Athena Coalition has successfully leveraged grassroots power to challenge the monopoly power of Amazon, and Color of Change9 has effectively used grassroots digital organizing to challenge the monopoly power of social media platforms such as Facebook. Putting monopolies in the crosshairs of organizers is critical because they best understand the real human and structural devastation caused by monopoly power, which is otherwise all too easily neglected.

Though we believe that grassroots leaders of color have the experience and expertise necessary to challenge monopoly power, the question remains: Why should they lead this fight? Grassroots leaders of color are already engaged in high-stakes battles with the forces of corporate power on fundamental issues, including environmental justice, worker justice, housing justice, prison and police abolition, and voter and democratic justice. We believe that these efforts can be bolstered if anti-monopoly policy development and advocacy were incorporated into these existing efforts but then followed the lead of organizers. For example, the primary opponents of prison and police abolition are private prison monopolies, such as GEO Group and CoreCivic, which profit from the arrest and incarceration of Black and brown people. **Opponents of the Green New Deal include energy monopolies BP and ExxonMobile, whose profits are derived from polluting Black and brown communities**.10 Finally, **opponents of the Homes Guarantee**, and its call for creating 12 million units of social housing outside of the for-profit housing market, **include big banks that profit from the commodification of affordable** and low-income **housing. Challenging these opponents by diminishing their monopoly power could prove to be a powerful weapon in the fight to dismantle unchecked corporate power and its real-life economic impact on people of color**.

How Corporate Monopolies Show Up in Today’s World

The distinguishing features of monopolies, when compared to your run of the mill corporation (large or small), are the reach and intensity of the corporate power that they wield. **Monopoly power turbocharges the ills of corporate power and creates a wider impact of the overlapping consequences** for people. In many ways, monopolies are created when corporate power becomes governing power.11 **Their sheer size and market dominance allow them to govern markets, and their expansive wealth gives them the power to manipulate prices, crush workers, and steamroll governments**. Ultimately, **monopolies’ extreme economic power**—which they use to gain outsized political power and then more economic power—**undermines the collective power of workers, consumers, small businesses, local communities, and governments**.

**It has become** difficult, and **inadequate, to rely on legal definitions to identify monopolies. The legal definition of monopolization is highly technical and complicated by centuries of conflicting jurisprudence. It's been narrowed to exclusively focus on the negative impact that anticompetitive actions have on consumers**.12 **This narrower focus intentionally shielded monopolies from any accountability for anticompetitive harm inflicted on workers, the environment, local communities, government, and democracy**. Federal enforcement of monopoly power is confined to the highly specialized legal practice of antitrust law enforcement.13 However, **centuries of political power wielded by corporate monopolies and their acolytes** (e.g., universities, think tanks, trade associations, and major law firms) **have rendered much of antitrust law enforcement toothless**.14

In the late 19th and early 20th century, the definition of monopoly was much wider and comprehensive. In this paper, we will expand the definition as well. Recognizing that this definitional work is in many ways a work in progress, we offer our definition as a point of discussion and debate for the larger field of anti-monopoly advocates.

In this paper, **we define monopoly as a corporate entity** (a single corporation or a group of corporations) **whose sheer size and anticompetitive behavior grant it disproportionate economic power and governing influence. This negatively affects the well-being of workers, consumers, markets, local communities, democratic governance, and the planet**.

Below are a few major industries that reveal how corporate concentration and monopolistic industries harm the economic lives of workers, consumers, and communities of color.

Big Tech

**Four corporations** comprise what has come to be known as “Big Tech”: Amazon, Apple, Facebook, and Alphabet (the parent company of Google). Each of these technology firms **dominate an enormous share of their respective technology markets**. Google, for example, controls 90 percent of the internet search market, and it controls the largest video sharing platform on the internet through its ownership of YouTube. Apple controls 50 percent of the cellphone market,15 and Amazon controls 50 percent of all ecommerce. Facebook and its many subsidiaries (such as WhatsApp and Instagram) dominate the social media and online advertising marketplace.16 Other technology firms, including Uber, Lyft, Microsoft, and Netflix, also demonstrate monopolistic, anticompetitive behavior in their respective markets. In many ways, these companies, and the people who control them, are the “robber barons” of our time.

Big Pharma

**The world's largest pharmaceutical corporations**, including Johnson & Johnson, Pfizer, Merck, Gilead, Amgen, and AbbVie, together comprise “Big Pharma.” These monopolies **build their profits by controlling the prices of critical life-saving pharmaceuticals** (e.g., insulin, drugs that regulate blood pressure, and critical antibiotics) **and life-altering medical devices** (e.g., heart stents and joint replacement devices). Between 2000 and 2018, a disproportionately small number of pharmaceutical companies made a combined $11 trillion in revenue and $8.6 trillion in gross profits.17 In 2014, the top 10 pharmaceutical companies had 38 percent of the industry’s total sales revenue.18 Much of these profits were gained driving up the price of critical drugs , extorting research and development (R&D) funding from the government, and leveraging Big Pharma’s political influence to weaken government oversight of the industry.19

Big Agriculture

Big Agriculture, or “Big Ag,” refers to monopolies that control major aspects of the global food supply chain. This includes companies such as Cargill, Archer Daniels Midland Company (ADM), Bayer, and John Deere. Though once a diffuse network of small farmers and supply chain companies, **recent mergers have created a system comprising a small number of corporations that are crowding out smaller, family-run companies including small farms**. Similar to Big Pharma, government subsidies are a massive component of the obscene profits made by Big Ag. Further, as often the largest employer in many small rural towns, **these corporations often ruthlessly wield their monopoly power to drive down wages and benefits to workers, skirt government safety regulations, and bully** (and even buy out) **small farmers**.

Big Banks

Known as the “Big Five,” **five banks control almost half of the industry’s nearly $15 trillion in financial assets**: JPMorgan Chase, Bank of America, Wells Fargo, Citigroup, and US Bancorp. **Their collective importance to the nation’s financial system has led some to consider them “too big to fail**.”20 In fact, in response to the financial crisis of 2008, the federal government provided trillions of dollars in relief to ensure that they did not collapse under the weight of the crisis.21 The Big Five have an incredible influence over the flow of money throughout our economy. **They finance critical goods and services, such as housing, higher education, infrastructure, and renewable energy**. They also finance extractive elements of our economy, such as fossil fuels and private prisons. But, most importantly, **they set the rules for who can and cannot access loan capital, and their exclusionary practices have been widely linked to the growth of racial wealth inequality** (as described in Section 3).

These are just four examples of industries that have been taken over by monopolies, but they are in no way exclusive. **Many other critical industries in our economy have been corrupted by monopolies, including the energy, health insurance, hospital, for-profit college, and delivery service industries**.

One note of caution on monopolies: While all corporate monopolies are harmful, some government monopolies can be critical to providing essential programs and services. Examples of government monopolies include public K–12 schools, publicly owned utilities, and the United States Postal Service (USPS). In fact, the USPS is codified in the US constitution to ensure that all people—even those in remote rural areas—can send and receive mail. Today, the USPS is an important employer to people of color, particularly Black people, in providing competitive wages and quality health and retirement benefits.

**The predation of corporate monopolies creates racial wealth inequality. Low-wage employers that employ people of color**, such as Walmart—the nation’s largest private employer—**often set the wage floor for local communities and the nation**.22 **Agribusinesses and pharmaceutical monopolies set prices at a “poverty premium” where people of color pay more for food and life saving drugs**. Also, **bank monopolies set the prices that people of color pay for basic financial services, and they provide capital to predatory lenders, including payday and car title lenders**.

## Case

**It’s useless action---their Hartman evidence describes is an useless strategy–dissipates necessary momentum for real changes by strengthening the right**

**Berman 15** – political science professor @ Barnard College

Sheri, “No Cheers For Anarchism” *Dissent* Volume 62, Number 4, Fall 2015 //

What are the uses of anarchism? The short answer is “not many.” Although anarchists have often been motivated by worthy aspirations and occasionally raised awareness of crucial issues, in general, anarchism is an ineffective way of improving the world. **Anarchists are better dreamers than doers**, and politics is the art of the possible. Although it may disappoint many on the left, a successful movement requires compromise, organization, and yes, even leadership, to actually get things done.¶ There are many variants and historical manifestations of anarchism, but characterizing all is a rejection of authority and hierarchy. Anarchists dream of a world without states, traditional political organizations, or any other structures that restrict individual freedom. Because they share such beliefs and goals with libertarians, anarchists are easily confused with them. In the American context, at least, the main distinction between the two concerns capitalism: anarchists view it as inherently coercive, while libertarians venerate it as the embodiment and guardian of individual rights. This has led the former to be viewed as left wing and the latter as right wing, but in reality, anarchists differ dramatically from other sectors of the modern left (just as libertarians differ dramatically from traditional conservatives and other factions of the modern right).¶ During the late nineteenth and early twentieth century anarchism’s rejection of traditional political organizations and activity led to its involvement in various uprisings and rebellions, the most important of which was the Paris Commune. Anarchists also became associated with “propaganda of the deed”—“spontaneous” and “voluntary” actions that reflected the power of the individual and were designed to inspire others. Although these actions need not necessarily be violent, they often were: during this period anarchists were responsible for a series of spectacular assassinations and bombings. A czar of Russia, presidents of Italy and France, kings of Portugal and Greece, and a president of the United States all met their ends at the hands of anarchists. Despite their often spectacular nature, anarchist activities were almost **uniformly unsuccessful**. For example, the Paris Commune’s [End Page 87] lack of internal organization, leadership, or agreed-upon goals left it prone to infighting and vulnerable to counter-attack; it was brutally crushed by the forces of counter-revolution. The most direct effect of assassinations and bombings, meanwhile, was to provide conservatives with a rationale for putting in place repressive measures against the entire left.¶ The ineffective nature of anarchism (including the violence it often entailed) and other Utopian movements led most on the left to turn away from them by the late nineteenth century and instead focus their energies on the creation of organized and disciplined parties and trade unions. Lenin famously excoriated anarchists and other “left-wing communists” as victims of an “infantile disorder, incapable of perseverance, organization, discipline and steadfastness.” Their efforts, he said, were premature and counterproductive: “Anarchism was not infrequently a kind of penalty for the opportunist sins of the working-class movement.” In Europe, persistent and effective political organizing enabled non-anarchist left-wing movements to transform the working class into a potent political force that was eventually able to force ancien régimes to accept democratization and at least some public social provision. And in Russia, of course, organization and discipline enabled Lenin and his band of communists to seize power directly during a crisis.¶ During the interwar period socialist parties became the bulwarks of democracy in many parts of Europe. Defending democracy meant that socialists needed to win elections and attract the support of the majority, which would in turn require compromises, trade-offs and patience—none of which appealed to anarchists. And so during the interwar period, anarchists returned to attacking the reigning order, even though it was now a democratic one in which socialists played a significant role. Indeed, during this period anarchists not only engaged in uprisings, rebellions, and other violent activities, they also attacked the “timidity” and “moderation” of those on the left who defended democracy. While it is certainly true that interwar democracy faced more powerful foes on the right than on the left during those years, anarchists significantly weakened democracy in manyplaces**,** most notably in Spain, where anarchist activity damaged and divided the left, provided fodder to the anti-democratic right, and helped pave the way for the civil war.¶ After 1945 the traditional, particularly social democratic, left helped put in place a postwar order that undergirded an unprecedented period of consolidated democracy, economic growth, and social stability in Europe and the West. Nonetheless by the 1960s many anarchist-influenced “New Left” and counter-culture movements (including punk and the Yippies in the United States, and squatters movements in many European cities) attacking the reigning “bourgeois, capitalist” order exploded onto the scene. While these movements did raise important issues—most notably the need to go beyond the political and economic achievements of the postwar order to [End Page 89] consider social problems and injustices as well—they also exhibited some notable pathologies. Some praised the likes of Ho Chi Minh, Mao Zedong, and Fidel Castro—hardly icons of freedom—and showed scorn for public opinion and for the “masses” who didn’t share their vision of the world. In addition, although vehement in their rejection of the contemporary order, these movements had no realistic plan for changing it and only vague and often apolitical alternatives to offer. As François Mitterrand once said of the leaders of the May 1968 student movement, when they “wanted to explain the motivations behind their demonstrations . . . what a mish-mash of quasi-Marxism, what hotch-potch, what confusion.”¶ At the end of the twentieth century, anarchist-influenced movements re-emerged on the left, most often under the banner of anti-globalization. Once again, these movements highlighted some critical issues, most notably growing inequality and environmental degradation, but had little to offer beyond that. Many critics, for example, have drawn parallels between the substantial influence enjoyed by a variety of right-wing groups in America and the theatrics and ephemeral impact of the Occupy movement. In his recent book, Barney Frank, for example, contrasted the National Rifle Association’s persistent grassroots organizing and resultant ability to mobilize supporters to flood lawmakers’ offices with letters and calls and to vote as a bloc, with the inclination of many on the left to “hold public demonstrations, in which like-minded people gather to reassure each other of their beliefs.” Frank goes on to argue that “if you care deeply about an issue and are engaged in group activity on its behalf that is fun and inspiring and heightens your sense of solidarity with others . . . you are most certainly not doing your cause any good.”¶ Although snarky, Frank is fundamentally correct. Although anarchism’s skepticism of authority and hierarchy and its desire to create a better world are admirable, its state-less, apolitical vision of that world is dangerous, and its tactics, ineffective**.** Moreover, too often this vision has led anarchists to reject democracy, since the majority of citizens have proven consistently unsympathetic to it. And too often anarchism’s tactics have served primarily to dissipate the left’s energies and leave it vulnerable to attack by its better organized counterparts on the right.¶ While anarchists are correct to remind us that the left must dream, we must always remember that it must also do. **A left that criticizes the existing order without offering realistic plans for changing it** or broadly attractive alternatives to it **is always going to be defeated by its opponents**. [End Page 90]

1. **focusing politics on personal narratives like the one in the 1AC divests us of the ability to contest power imbalances.**

**Thompson**, Associate Professor of Political Science at William Paterson University, **‘15**

(Michael J., “Inventing the “Political”: Arendt, Antipolitics, and the Deliberative Turn in Contemporary Political Theory,” in *Radical Intellectuals and the Subversion of Progressive Politics*, ed. Gregory Smulewicz-Zucker and Michael J. Thompson, Chapter 3)

The problem here is that she perceives “opinions” as **originating in some existentially distinctive self** rather than from social relations and the ways that ideas and opinions that people come to accept are generally **embedded** in the **institutional functions** of the world they inhabit. This is no place for a phenomenological “lifeworld”; the problem is cognitive: The concepts, opinions, and ideas of people **are shaped by the social relations within which they are situated**, **rather than springing from some existential “beginning**.” The importance of the ’αρχη´ in this sense—as rule and as origin or beginning—**is that it denotes a self that is somehow presocial** and existentially prior to any form of socialization. We are asked to believe that each person does in fact initiate an ’ αρχη´, that each individual is somehow unique and that this constitutes a valid basis for forming political knowledge about the world. In contrast to this, the problem of social power must be conceived as a problem of domination. Domination is not simply a process whereby one has legal or some other form of authority over an other; **it is a situation where social relations are constructed** **in order to extract benefit from others**, control and subordinate them for some self-interested purpose, as well as order the field of ideas and opinions to legitimate those structures of extractive power. Opinion thereby becomes victimized by a sensus communis **colonized by norms** **and values rooted in the prevailing forms of legitimacy. Opinion effectively expresses reified thought**. Without truth, each opinion must be taken and accepted on its face; each is “isonomic” in the political realm, as are their opinions.17 But if we were to accept this thesis, so crucial for Arendt’s thought, we **would find ourselves in a condition where ideological consciousness is free to reign**, where opinion about things and the world has **no objective metric** for us to be able to gauge its relevance. We would find ourselves **adrift**, **with no way to shatter the reified structures of consciousness** **that allow real political and social power to hold sway**. In the modern age, we cannot separate the dimension of surplus extraction from that of the constitution of values, norms, and commonly accepted opinions since they work in tandem to **form the social order itself.**

This is one reason **why any valid conception of politics cannot**, however, **remain within the confines of opinion**. It is not the case that all knowledge, **all search for rational truths are limited to surface phenomena**. The reality is that **truth-claims constitute the very substance of political power and authority itsel**f. Indeed, as Rousseau and Weber knew all too well, the basic problem of political power in the modern world is the way it is **made legitimate** in the minds of its members.18 **Violence and coercion**, in contrast to Arendt’s thinking, **are not the main tools of those who seek domination**—rather, **it is legitimacy**. And this legitimacy is constructed by **cultivating opinion**, by weaving the cognitive and valueorientational prerequisites that in turn legitimate the concrete forms of power that pervade the social world. Domination, the real concern of politics, is therefore **functional in nature**: **Institutional power is built from the minds of its participants**, not from fiat. Truth is therefore a means by which we **shed the ideological valences** of thought that are shaped by socialization. **It colonizes precisely those capacities and forms of “thinking”** that Arendt sees as constituting freedom and “action.” Indeed, since Arendt’s project is to carve out and define a distinctive sphere of thinking and acting that is nonscientific, she is forced to rely on the phenomenological tools she has ready-at-hand. **The denigration of truth-claims is a major weakness in her approach**, **and it has encouraged many other subsequent theorists to dispense with the importance of truth-claims and their political import for politics**.

# 1NR

## Case

#### Structural barriers either strip Afrofuturism of its revolutionary potential or prove it’s doomed to fail

Olukotun 15 – author of the novel *After the Flare*, which won a 2018 Philip K. Dick Special Citation. He is a fellow at Future Tense.

Deji Bryce Olukotun, “Utopian and Dystopian Visions of Afrofuturism,” *Slate*, 30 November 2015, <https://slate.com/technology/2015/11/utopian-and-dystopian-visions-of-afrofuturism.html>

In the dystopian vision, no one on the business end of creative industries—the agents, marketers, publishers, producers—takes risks on creators of color. Artists might be forced to revert to addressing explicitly black themes. “We have to write a slave narrative,” Lisa Lucas said, “or a story about civil rights, a retelling of Rosa Parks, some kind of better understanding of what it was like in 1960 or 1830, or what it was like on a slave boat.”

It’s a mistake, too, to think that crowdfunding platforms such as Kickstarter, Indiegogo, and Patreon can solve the problem of structural exclusion. The impressive speculative fiction collection Long Hidden: Speculative Fiction From the Margins of History was created from a Kickstarter campaign. The volunteer-run Tumblr blog We Are Wakanda, which is named for the fictional African kingdom in Marvel’s Black Panther series, publishes an incredible volume of content about black comics and science. Founder Lionel Queen recently launched an Indiegogo campaign to develop a new app to support underrepresented creators. It’s a great idea, well worth supporting, but an Afrofuturism that relies upon crowdfunding to survive is dystopian. It means there’s no sustainable investment.

Afrofuturism also needs to overcome its geographic myopia. Nnedi Okarafor, one of the most prominent science fiction writers working today, said: “My issue with Afrofuturism is that it has traditionally been based and rooted far too much in American culture.” She champions what she calls “Africa-based sci-fi.” Authors such as Fred Strydom, Lauren Beukes, and Sarah Lotz are writing engaging fiction set on the continent. But it’s dangerous to oversimplify this trend. To my knowledge, not a single black sci-fi writer has been published by a major publishing house in Africa, and most writers working in Africa-based sci-fi hail from South Africa or Nigeria—not coincidentally, the largest economies on the continent.

There are other threats to Afrofuturism, too. Safe online spaces could become mired in hate and vitriol. The recent controversy surrounding the Hugo Awards—one of the most prestigious awards for science fiction writing—shows that the “administrators of color” whom Lisa Lucas supports tend to be missing from sci-fi culture. In that distasteful example, white authors attempted to game the voting system to fight against the rise in sci-fi of nontraditional and marginalized voices, such as LGBTQ authors. (They did not succeed.)

In some ways, the new film Star Wars: The Force Awakens exemplifies both the utopian and dystopian visions of Afrofuturism. The film stars the black British actor John Boyega as Finn, reportedly a major character in the storyline. Boyega can inspire the next generation of black sci-fi actors, but none of the credited writers will become a role model for the next generation of black writers—they’re all white.

#### AND, the will to create an Afrofuturism immediately legible and digestible to an audience turns the aff – the only radical afrofuturism is that which makes you feel uncomfortable rather than that which tries to create a feel-good politics of affirmation

-I feel like this links if they articulate the aff like “afrofuturism is good because it gives black people energy or makes us feel better about ourselves”

Eshun 14 – British-Ghanaian writer and filmmaker and current MA Professor of Art Theory in the Department of Visual Cultures at Goldsmiths College, University of London

Christoph Cox and Kodwo Eshun, “Afrofuturism, Afro-Pessimism and the Politics of Abstraction: A Conversation with Kodwo Eshun,” 2014, <http://faculty.hampshire.edu/ccox/Cox.Interview%20with%20Kodwo%20Eshun.pdf>

KE: Exactly. Hermeticism is a term which signals that desire, just that desire to manufacture almost like cult objects which travel by themselves and which people will cherish on that basis.

CC: Afrofuturism today doesn’t seem very interested in that hermeticism. It seems satisfied with a set of stock tropes, largely about space and the alien.

KE: I think you’re absolutely right. The search for tropes, the tropological search for notions of space, notions of extraterritoriality, notions of identification with the alien, all of that is fine, but it doesn’t go far enough. It’s not intriguing enough. The artists that I think have this quality – Frohawk Two Feathers, for example – they’re not such an easy read. There should be some resistance. The work should push back against you. It shouldn’t be quite so legibly transparent. And the question of hermeticism is about that. It’s about the work retreating from you when you go towards it.

There’s a curator in the States, Valerie Cassel Oliver, who’s been excavating African-American abstraction. It’s not that it was buried, but for different reasons, certain abstractionists perennially complicate an easy read. Whether it’s Norman Lewis or Fred Eversley, these figures are not racially readable. That’s all it takes. As soon as the work throws up a dimension of optical fugitivity, in other words, as soon as the work cannot immediately be read as belonging to what people recognize is African-American legibility, then suddenly it disappears, whereas actually it is exactly that work that is most compelling precisely because it blocks legibility so you can’t easily read it in terms of the identity of the person who is making it. You have to do more work. You have to think of all the other things that the work might be about, as well as the identity of the artist. So, with people like Charles Gaines, the African-American Fluxus artist Benjamin Patterson, all these artists, the complexity of their work is not an easy read. So, they tend not to be named when we talk about Afrofuturism. But actually, if they’re not Afrofuturists, I don’t know who is.

And then parallel to that of course is the last ten years of what’s called “Afro-Pessimism,” which I find deeply compelling: the writings of Fred Moten, Jared Sexton, Frank Wilderson III, Saidiya Hartman, and behind them Hortense Spillers, Sylvia Winter, Orlando Patterson, Cedric Robinson.12 And then, obviously, in a South African context Achille Mbembe. In all these writers, there’s this profound philosophical question of what Nahum Chandler calls “the problem of the negro for thought.”13 This whole way of thinking also doesn’t seem to have penetrated the overly easy optimism of Afrofuturism in which a search for virtuous objects to be retrieved is somehow this self-congratulatory project. It’s an easy affirmation, which hasn’t taken any notice either of Cassel Oliver’s project of abstraction or of the arguments going on inside of Afro-Pessimism. It seems to be totally separate from those; but it’s happening simultaneously. To me, these things need to be brought into alignment with each other in a way that they haven’t been so far.

Afrofuturism for me is not ipso facto that compelling. There are a few examples of compelling work. But the vast majority of it still feels me introductory, like a bid for the mainstream, which is not interesting. The music I’m listening to now, the new Shabazz Palaces album, Lese Majesty, is probably the most compelling Afrofuturist document for quite a while just because the elaboration of its track titles, which sound like Samuel Delany short stories. And then on the other hand, obviously all the things coming out of Chicago with Rashad and Spinn, before Rashad’s untimely death. And then in the U.K., you’ve got a new alternative R&B with this artist FKA Twigs and another artist called Kelela who are reinventing R&B, stretching it out, distending it. This is where I can see Afrofuturism continuing, but it’s not what immediately comes to mind. Maybe it’s the relief of not having these familiar tropes, the overly familiar tropes of space and extraterritoriality of cyborgs and these very ‘90s tropes. It’s the relief of not having these continually foregrounded. So, there’s a search on my part and on a lot of people’s part for references that go beyond that and a different kind of cathexis.

CC: For you, Afrofuturism is about affect or desire rather than trope or image.

KE: Exactly. Maybe the art world is bound to visual tropes; and so it settles for that. The art world always congratulates itself on its sense of discovery. But a lot of it feels to me like retreading grounds. I’d like to see a rapprochement between Afrofuturism and Afro-Pessimism. I’d like to see the two meet each other head-on. The kind of exorbitant seriousness of Afro-Pessimism and the same exorbitant seriousness of Accelerationism, the kind of Prometheanism of Accelerationism, which is the aspect I really like very much. Ray Brassier’s recent turn to Prometheanism I find totally compelling.14 And then Afro-Pessimism’s struggles with negation and its preference for the ontological, I find all those really, really compelling. And my wish is that both those forces put pressure on Afrofuturism and kind of break it up and disassemble it so that it reforms in unrecognizable shapes, so that, you know, the triumvirate of Sun Ra, Clinton, Perry cannot be easily invoked. That invocation has to be checked. And in that silence, other things can emerge.

I’m just uneasy when Afrofuturist’s becomes so celebratory. It’s like, “What are you celebrating, for Christ’s sake?” There’s actually nothing to celebrate. They should be full of more seething discontent. I can see that in Rammellzee, that kind of totalitarian aesthetic. It’s not even dystopian. It’s kind of autocratic, an autocratic desire to rewrite language and therefore code systems and symbol systems. His extreme militarizing . . .

## Innovation DA

#### AND, US hegemony has been the greatest anti-imperial force in history.

Deudney & Ikenberry 15 (Daniel Deudney, Johns Hopkins University G. John Ikenberry, Princeton University “America’s Impact: The End of Empire and the Globalization of the Westphalian System”, August 2015, http://scholar.princeton.edu/sites/default/files/gji3/files/am-impact-dd-gji-final-1-august-2015.pdf)

In contemporary debates, this argument undercuts, modifies, and qualifies characterizations held by so many of the United States as essentially imperial, and the American order as an empire. In our rendering, the United State is not the last Western empire, but the first anti-imperial and post-imperial great power in the global system. Our argument is thus focused on the consequences of American foreign policy for the evolution of the international system, and we do not in this confined treatment offer an explanation for the origins of U.S. foreign policy. In short, we offer an argument about impacts rather than the sources of America’s antiimperial and pro-Westphalian role. Against the backdrop of this evolution of the international system and the four waves of empire building and dismantlement, it becomes possible to see more clearly the many ways in which the United States played important anti-imperial, anti-colonial, and pro-Westphalian roles. 16 The Pattern of American Anti-Imperial, Anti-Colonial, and Pro-Westphalian Impacts In each of the four waves of empire building and dismantlement, the United States had an impact. The United States was the first “new nation” to emerge from a rebellion against European imperial rule during the first wave of modern empire. The United States also supported the independence of other European settler colonies throughout the Americas and, with the Monroe Doctrine, helped sustain their independence against European efforts to recolonize parts of the Americas. In the second wave of late 19th century empire-building, the United States, despite its great relative power, did not establish an empire of its own of any significance or duration. And during the latter part of the 20th century, the United States pushed European decolonization, thus facilitating the breakup of second wave empires. In the great world wars in the 20th century, the United States played an important role in thwarting a third wave of imperial projects of Germany, Japan, and Italy. In the second half of the 20th century, the United States played decisive roles, both ideological and military, in thwarting the fourth wave of empire building, the expansion of the communist great power, the Soviet Union, as well as communist coups and revolutions in many weak and small independent states. Table

Description automatically generated The United States also played a variety of important roles in building and strengthening Westphalian institutions, moderating inter-state anarchy, and facilitating the ability of states to survive as independent members of international society. From its inception, the United States was precocious in its support for the law of nations, the institutions of the society of states, particularly the laws of war and neutrality, and public international law, as a means of restraining war and aggression. In both the 19th and 20th centuries, the United States, first regionally and then globally, inspired and helped legitimate anti-colonial and anti-imperial independence movements and national liberation struggles among peoples struggling against empires all over the world. In the 20th century, the United States led the efforts to institutionalize Westphalian norms of non-aggression and sovereign independence, first with the League of Nations and then with the United Nations Charter. In the second half of the 20th century, the American-led liberal international order institutionalized free trade and multilateral cooperation, thus providing the infrastructure for a global economic system, thus enabling smaller and weaker states to sustain their sovereign. Also in the second half of the 20th century, the American system of military alliances contributed to the dampening of violent conflicts among allied states, particularly in Europe and East Asia, thus Table

Description automatically generatedprotecting the Westphalian system from the return of violent conflict and empire-building. Taken together, these varied American activities in the world clearly provide strong preliminary evidence for our claim that the United States has significantly contributed to the dismantlement of empires, the thwarting of further empire-building, and to the universalization, institutionalization, and stabilization of the Westphalian state-system.

#### AND, it would impact Maxine and other people of color disproportionately.

Nicole Akoukou **Thompson 18**. Chicago-based creative writer. 4-6-2018. "Why I will not allow the fear of a nuclear attack to be white-washed." RaceBaitR. http://racebaitr.com/2018/04/06/2087/#

I couldn’t spare empathy for a white woman whose biggest fear was something that hadn’t happened yet and might not. Meanwhile, my most significant fears were in motion: women and men dying in cells after being wrongly imprisoned, choked out for peddling cigarettes, or shot to death during ‘routine’ traffic stops. I twitch when my partner is late, worried that a cantankerous cop has brutalized or shot him because he wouldn’t prostrate himself. As a woman of color, I am aware of the multiple types of violence that threaten me currently—not theoretically. Street harassment, excessively affecting me as a Black woman, has blindsided me since I was eleven. A premature body meant being catcalled before I’d discussed the birds and the bees. It meant being followed, whistled at, or groped. As an adult, while navigating through neighborhoods with extinguished street lights, I noticed the correlation between women’s safety and street lighting—as well as the fact that Black and brown neighborhoods were never as brightly lit as those with a more significant white population. I move quickly through those unlit spaces, never comforted by the inevitable whirl of red and blue sirens. In fact, it’s always been the contrary. Ever so often, cops approach me in their vehicle’s encouraging me to “Hurry along,” “Stay on the sidewalk,” or “Have a good night.” My spine stiffening, I never believed they endorsed my safety. Instead, I worried that I’d be accused of an unnamed accusation, corned by a cop who preys on Black women, or worse. A majority of my 50-minute bus ride from the southside of Chicago to the north to join these women for the birthday celebration was spent reading articles about citywide shootings. I began with a Chicago Tribute piece titled “33 people shot, seven fatally, in 13 hours,” then toppled into a barrage of RIP posts on Facebook and ended with angry posts about police brutality on Tumblr. You might guess, by the time I arrived to dinner I wasn’t in the mood for the “I can’t believe we’re all going to die because Trump is an idiot” shit. I shook my head, willing the meal to be over, and was grateful when the check arrived just as someone was asking me about my hair. My thinking wasn’t all too different from Michael Harriot’s ‘Why Black America Isn’t Worried About the Upcoming Nuclear Holocaust.” While the meal was partly pleasant, I departed thinking, “fear of nuclear demolition is just some white shit.” Sadly, that thought would not last long. I still vibe with Harriot’s statement, “Black people have lived under the specter of having our existence erased on a white man’s whim since we stepped onto the shore at Jamestown Landing.” However, a friend—a Black friend—ignited my nuclear paranoia by sharing theories about when it might happen and who faced the greatest threat. In an attempt to ease my friend’s fear, I leaned in to listen but accidentally toppled down the rabbit hole too. I forked through curated news feeds. I sifted through “fake news,” “actual news,” and foreign news sources. Suddenly, an idea took root: nuclear strike would disproportionately impact Black people, brown people, and low-income individuals. North Korea won’t target the plain sight racists of Portland, Oregon, the violently microaggressive liberals of the rural Northwest, or the white-hooded klansmen of Diamondhead, Mississippi. No, under the instruction of the supreme leader Kim Jong-un, North Korea will likely strike densely populated urban areas, such as Los Angeles, Chicago, Washington D.C., and New York City. These locations stand-out as targets for a nuclear strike because they are densely populated U.S. population centers. Attacking the heart of the nation or populous cities would translate to more casualties. With that in mind, it’s not lost on me that the most populous cities in the United States boast sizeable diverse populations, or more plainly put: Black populations. This shit stresses me out! There’s a creeping chill that follows me, a silent alarm that rings each time my Google alert chimes letting me know that Donald Trump has yet again provoked Kim Jong-Un, a man who allegedly killed his very own uncle. I’ve grown so pressed by the idea of nuclear holocaust that my partner and I started gathering non-perishables, candlesticks, a hand-crank radio, and other must-buy items that can be banked in a shopping cart. The practice of preparing for a nuclear holocaust sometimes feels comical, particularly when acknowledging that there has long been a war on Black people in this country. Blackness is bittersweet in flavor. We are blessed with the melanized skin, the MacGyver-like inventiveness of our foremothers, and our blinding brightness—but the anti-blackness that we experience is also blinding as well as stifling. We are stuck by rigged systems, punished with the prison industrial complex, housing discrimination, pay discrimination, and worse. We get side-eyes from strangers when we’re “loitering,” and the police will pull us over for driving “too fast” in a residential neighborhood. We get murdered for holding cell phones while standing in our grandmother’s backyard. The racism that strung up our ancestors, kept them sequestered to the back of the bus and kept them in separate and unequal schools still lives. It lives, and it’s more palpable than dormant. To me, this means one thing: Trump’s America isn’t an unfortunate circumstance, it’s a homecoming event that’s hundreds of years in the making, no matter how many times my white friends’ say, “He’s not my president.” In light of this homecoming, we now flirt with a new, larger fear of a Black genocide. America has always worked towards Black eradication through a steady stream of life-threatening inequality, but nuclear war on American soil would be swift. And for this reason I’ve grown tired of whiteness being at the center of the nuclear conversation. The race-neutral approach to the dialogue, and a tendency to continue to promote the idea that missiles will land in suburban and rural backyards, instead of inner-city playgrounds, is false. “The Day After,” the iconic, highest-rated television film in history, aired November 20, 1983. More than 100 million people tuned in to watch a film postulating a war between the Soviet Union and the United States. The film, which would go on to affect President Ronald Reagan and policymakers’ nuclear intentions, shows the “true effects of nuclear war on average American citizens.” The Soviet-targeted areas featured in the film include Higginsville, Kansas City, Sedalia, Missouri, as well as El Dorado Springs, Missouri. They depict the destruction of the central United States, and viewers watch as full-scale nuclear war transforms middle America into a burned wasteland. Yet unsurprisingly, the devastation from the attack is completely white-washed, leaving out the more likely victims which are the more densely populated (Black) areas. Death tolls would be high for white populations, yes, but large-scale losses of Black and brown folks would outpace that number, due to placement and poverty. That number would be pushed higher by limited access to premium health care, wealth, and resources. The effects of radiation sickness, burns, compounded injuries, and malnutrition would throttle Black and brown communities and would mark us for generations. It’s for that reason that we have to do more to foster disaster preparedness among Black people where we can. Black people deserve the space to explore nuclear unease, even if we have competing threats, anxieties, and worries. Jacqui Patterson, Director of the Environmental and Climate Justice Initiative, once stated: African American communities are disproportionately vulnerable to and impacted by natural (and unnatural) catastrophes. Our socio-economic vulnerability is based on multiple factors including our lack of wealth to cushion us, our disproportionate representation in lower quality housing stock, and our relative lack of mobility, etc.

#### Consequentialism is key to determine WHETHER OR NOT Afrofuturism is a good strategy.

Joseph Schwartz 8, Professor of Political Science at Temple University, The Future of Democratic Equality, 60-

A politics of radical democratic pluralism cannot be securely grounded by a whole-hearted epistemological critique of “enlightenment rationality.” For implicit to any radical democratic project is a belief in the equal moral worth of persons; to embrace such a position renders one at least a “critical defender” of enlightenment values of equality and justice, even if one rejects “enlightenment metaphysics” and believes that such values are often embraced by non-Western cultures. Of course, democratic norms are developed by political practice and 60 struggle rather than by abstract philosophical argument. But this is a sociological and historical reality rather than a trumping philosophical proof. Liberal democratic publics rarely ground their politics in coherent ontologies and epistemologies; and even among trained philosophers there is no necessary connection between one’s metaphysics and one’s politics. There have, are, and will be Kantian conservatives (Nozick), liberals (Rawls), and radicals (Joshua Cohen; Susan Okin); teleologists, left, center, and right (Michael Sandel, Alasdair McIntyre, or Leo Strauss); anti-universalist feminists (Judith Butler, Wendy Brown) and quasi-universalist, Habermasian feminists (Seyla Benhabib, Nancy Fraser).¶ Post-structuralists try to read off from an epistemology or ontology a politics; such attempts simply replace enlightenment meta-narratives with postmodern (allegedly anti) meta-narratives. Such efforts represent an idealist version of the materialist effort—which post-structuralists explicitly condemn—to read social consciousness off of the structural position of “the agent.” A democratic political theory must offer both a theory of social structure and of the social agents capable of building such a society. In exchanging the gods of Weber and Marx for Nietzsche and Heidegger (or their epigones Foucault and Derrida), poststructuralist theory has abandoned the institutional analysis of social theory for the idealism of abstract philosophy. ¶ Connolly, Brown, and Butler reject explicit moral deliberation as a bad faith Nietzschean attempt at “ressentiment.” Instead, they celebrate the amoral, yet ethical strivings of a Machiavellian or Gramscian realist “war of position.”44 Sheldon Wolin, however, has written convincingly of how Machiavelli can be read as an ethical realist, a theorist of moral utilitarianism.45 Even a Machiavellian or Gramscian political “realist” must depend upon moral argument to justify the social utility of hard political choices. That is, if one reads both as ethical utilitarians who believe that, at times, one must “dirty” one’s hands in order to act ethically in politics, then they embrace a utilitarian, “just war” theory of ethical choice. According to this consequentialist moral logic, “bad means” are only justifiable if they are the only, unavoidable way to achieve a greater ethical good—and if the use of such “bad means” are absolutely minimized. Such “hard” political choices yield social policies and political outcomes that fix identities as well as transform them.¶ Not only in regard to epistemological questions has post-structuralist theory created a new political “metaphysics” which misconstrues the nature of democratic political practice; the post-structuralist analysis of “the death of man” and “the death of the subject” also radically preclude meaningful political agency. As with Michel Foucault, Butler conceives of “subjects” as “produced” by powerknowledge discourses. In Butler’s view, the modernist concept of an autonomous subject is a “fictive construct”; and the very act of adhering to a belief in autonomous human choice is to engage in “exclusion and differentiations, perhaps a repression, that is subsequently concealed, covered over, by the effect of autonomy.”46 That is, the power of discourse, of language and the unconscious, “produces subjects.” If those “subjects” conceive of themselves as having the capacity for conscious choice, they are guilty of “repressing” the manner in which their own “subjectivity” is itself produced by discursive 61 exclusion: “if we agree that politics and a power exist already at the level at which the subject and its agency are articulated and made possible, then agency can be presumed only at the cost of refusing to inquire into its construction.”47 Susan Bickford pithily summarizes the post-structuralist rejection of the modernist subject: “power is not wielded by autonomous subjects; rather through power, subjectivity is crafted.”48 Bickford grants that post-structuralism provides some insight into how group and individual identity is “culturally constructed.” But Bickford goes on to contend that after post-structuralism exposes the “lie of the natural” (that there are no natural human identities), “socially constructed” modern individuals still wish to act in consort with others and to use human communication to influence others: “people generally understand themselves as culturally constituted and capable of agency.”49¶ For if there is no “doer behind the deed,” but only “performative” acts that constitute the subject, how can the theorist (or activist) assign agency or moral responsibility to actors who are “constituted by discursive practices.” (“Discursive practices” engaged in by whom, the observer may ask?) Butler insists that not only is the subject “socially constituted” by power/knowledge discourses, but so too is the “ontologically reflexive self” of the enlightenment. Now if this claim is simply that all social critics are socially-situated, then this view of agency is no more radical a claim than that made by Michael Walzer in his conception of the social critic (or agent). Walzer argues that even the most radical dissident must rely upon the critical resources embedded within his own culture (often in the almost-hidden interstices of that culture). Effective critical agency cannot depend on some abstract universal, external logic.50 Asserting that critical capacities are themselves socially constructed provides the reader with no means by which to judge whether forms of “resistance” are democratic and which are not. That is, no matter how hard one tries to substitute an aesthetic, “ironic,” “amoral ethical sensibility” for morality, the social critic and political activist cannot escape engaging in moral argument and justification with fellow citizens.

#### There’s a HUGE difference between saying “many black people experience terrible racism” and saying “everyone in the world is already biologically dead.”

Torbjörn **Tännsjö 11**. The Kristian Claëson Professor of Practical Philosophy at Stockholm University. 2011. “Shalt Thou Sometimes Murder? On the Ethics of Killing.” https://www.philosophy.su.se/polopoly\_fs/1.126012.1361890813!/menu/standard/file/thoushalt-inprogress.doc

I suppose it is correct to say that, if Schopenhauer is right, if life is never worth living, then according to utilitarianism we should all commit suicide and put an end to humanity. But this does not mean that, each of us should commit suicide. I commented on this in chapter two when I presented the idea that utilitarianism should be applied, not only to individual actions, but to collective actions as well.¶ It is a well-known fact that people rarely commit suicide. Some even claim that no one who is mentally sound commits suicide. Could that be taken as evidence for the claim that people live lives worth living? That would be rash. Many people are not utilitarians. They may avoid suicide because they believe that it is morally wrong to kill oneself. It is also a possibility that, even if people lead lives not worth living, they believe they do. And even if some may believe that their lives, up to now, have not been worth living, their future lives will be better. They may be mistaken about this. They may hold false expectations about the future.¶ From the point of view of evolutionary biology, it is natural to assume that people should rarely commit suicide. If we set old age to one side, it has poor survival value (of one’s genes) to kill oneself. So it should be expected that it is difficult for ordinary people to kill themselves. But then theories about cognitive dissonance, known from psychology, should warn us that we may come to believe that we live better lives than we do.¶ My strong belief is that most of us live lives worth living. However, I do believe that our lives are close to the point where they stop being worth living. But then it is at least not very far-fetched to think that they may be worth not living, after all. My assessment may be too optimistic.¶ Let us just for the sake of the argument assume that our lives are not worth living, and let us accept that, if this is so, we should all kill ourselves. As I noted above, this does not answer the question what we should do, each one of us. My conjecture is that we should not commit suicide. The explanation is simple. If I kill myself, many people will suffer. Here is a rough explanation of how this will happen: ¶ ... suicide “survivors” confront a complex array of feelings. Various forms of guilt are quite common, such as that arising from (a) the belief that one contributed to the suicidal person's anguish, or (b) the failure to recognize that anguish, or (c) the inability to prevent the suicidal act itself. Suicide also leads to rage, loneliness, and awareness of vulnerability in those left behind. Indeed, the sense that suicide is an essentially selfish act dominates many popular perceptions of suicide. ¶ The fact that all our lives lack meaning, if they do, does not mean that others will follow my example. They will go on with their lives and their false expectations — at least for a while devastated because of my suicide. But then I have an obligation, for their sake, to go on with my life. It is highly likely that, by committing suicide, I create more suffering (in their lives) than I avoid (in my life).

#### War structures inequalities, NOT the other way around --- proves we access all of this offense.

Horgan 12—John Horgan, Director of the Center for Science Writings at the Stevens Institute of Technology, 2012, The End of War, Chapter 5, Kindle p. 1600-1659

Throughout this book, I’ve examined attempts by scholars to identify factors especially conducive for peace. But there seem to be no conditions that, in and of themselves, inoculate a society against militarism. Not small government nor big government. Not democracy, socialism, capitalism, Christianity, Islam, Buddhism, nor secularism. Not giving equal rights to women or minorities nor reducing poverty. The contagion of war can infect any kind of society. Some scholars, like the political scientist Joshua Goldstein, find this conclusion dispiriting. Early in his career Goldstein investigated economic theories of war, including those of Marx and Malthus. He concluded that war causes economic inequality and scarcity of resources as much as it stems from them. Goldstein, a self-described “pro-feminist,” then set out to test whether macho, patriarchal attitudes caused armed violence. He felt so strongly about this thesis that he and his wife limited their son’s exposure to violent media and contact sports. But by the time he finished writing his 522-page book War and Gender in 2001, Goldstein had rejected the thesis. He questioned many of his initial assumptions about the causes of war. He never gave credence to explanations involving innate male aggression—war breaks out too sporadically for that—but he saw no clear-cut evidence for non-biological factors either. “War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars’ outbreaks and outcomes,” Goldstein writes. “Rather, war has in part fueled and sustained these and other injustices.” He admits that all his research has left him “somewhat more pessimistic about how quickly or easily war may end.” But here is the upside of this insight: if there are no conditions that in and of themselves prevent war, there are none that make peace impossible, either. This is the source of John Mueller’s optimism, and mine. If we want peace badly enough, we can have it, no matter what kind of society we live in. The choice is ours. And once we have escaped from the shadow of war, we will have more resources to devote to other problems that plague us, like economic injustice, poor health, and environmental destruction, which war often exacerbates. The Waorani, whose abandonment of war led to increased trade and intermarriage, are a case in point. So is Costa Rica. In 2010, this Central American country was ranked number one out of 148 nations in a “World Database of Happiness” compiled by Dutch sociologists, who gathered information on the self-reported happiness of people around the world. Costa Rica also received the highest score in another “happiness” survey, carried out by an American think tank, that factored in the nation’s impact on the environment. The United States was ranked twentieth and 114th, respectively, on the surveys. Instead of spending on arms, over the past half century Costa Rica’s government invested in education, as well as healthcare, environmental conservation, and tourism, all of which helped make the country more prosperous, healthy, and happy. There is no single way to peace, but peace is the way to solve many other problems. The research of Mueller, Goldstein, Forsberg, and other scholars yields one essential lesson. Those of us who want to make the world a better place—more democratic, equitable, healthier, cleaner—should make abolishing the invention of war our priority, because peace can help bring about many of the other changes we seek**.** This formula turns on its head the old social activists’ slogan: “If you want peace, work for justice.” I say instead, “If you want justice, work for peace.” If you want less pollution, more money for healthcare and education, an improved legal and political system—work for peace.

#### A confluence of statistical factors prove that, even though things are still pretty bad, racial progress is possible and occurring.

Hochschild 17 (Jennifer L. Hochschild , Professor of Government, African and African American Studies, and the Chair of the Department of Government (Harvard University), Chair in American Law and Governance at the Library of Congress, President of the American Political Science Association, “Left Pessimism and Political Science,” Perspectives on Politics, Volume 15, Issue 1, March 15th, p. 6-19, DOI: <https://doi.org/10.1017/S1537592716004102> \*\*modified to allow for more humanizing frames)

Is Pessimism the Only Sensible or Empirically Warranted Response in these Two Arenas? It is easy to find evidence to support pessimism about American racial dynamics or the societal deployment of genomic science. The United States is notorious for its racially- and ethnically-inflected poverty and excessive levels of incarceration; undocumented migrants live in legal limbo; new genomics techniques such as CRISPR-Cas9 tempt humankind into hubristic manipulation of nature, and scientists’ promises to cure cancer through genetics knowledge ring hollow to many. The question for this article is whether there are also strong grounds for optimism in my two illustrative realms, such that one could plausibly and persuasively choose to be “centered on advancement concerns” rather than “centered on security concerns.” The answer is yes. Again I can point only to illustrative, suggestive evidence. First, the gap between ~~blacks’~~ [black people’s] and whites’ life expectancy declined from seven years in 1990 to 3.4 years in 2014. That is an astonishing, perhaps unprecedented, rate of change given the usual slow pace of demographic transformation. It is important in itself, of course, and also as a summary statement about an array of other social phenomena in which racial disparities are declining. ~~Blacks~~ [Black people] are living longer mainly because of declining rates of homicides, HIV mortality, infant mortality, cancer and heart disease, and suicide among black men.19 A lot of things have to go right for a group’s life expectancy to rise rapidly. Second, applications for U.S. citizenship rose from the previous year in ten of the fifteen years from 2000 to 2015, while declining in four (and remaining stable in one). That is an important indicator of immigrant incorporation, and especially relevant to political scientists because “Hispanics and Asians who are naturalized citizens tend to have higher voter turnout rates than their U.S.-born counterparts.” 20 Third, non-white Americans themselves tend to feel pretty good about their lives. Gallup Poll asked in 2016, “Where do you expect your life satisfaction to be in five years?” If whites’ response is standardized at 1, then ~~blacks~~ [black people’s] are at 2.97, and Hispanics at 1.29. Only Asian Americans, at 0.97, were less optimistic than whites. Gallup also asked about one’s level of stress in the previous day. If whites are again standardized at 1, then ~~blacks~~ [black people] are at 0.48; Hispanics at 0.53; and Asian Americans at 0.75. Middle-class ~~blacks~~ [black people] were half as likely as middle class whites to report stress during the previous day.21 In the arena of genomics also, one can point to grounds for optimism rather than pessimism. The Innocence Project, “dedicated to exonerating wrongfully convicted individuals through DNA testing and reforming the criminal justice system to prevent future injustice,” has enabled about 350 people to be released from prison. (Not so parenthetically, seven out of ten are African American or Latino, mostly poor men.) More extensive DNA testing might lead to many more exonerations; one careful analysis of serious crime convictions found that “in five percent of homicide and sexual assault cases DNA testing eliminated the convicted offender as the source of incriminating physical evidence.” Previous estimates had pegged the share of wrongful convictions at no more than one to two percent.22 More generally, “DNA profiling [of convicted felons] reduces the probability of future convictions by 17% for serious violent offenders and by 6% for serious property offenders .... These are likely underestimates of the true deterrent effect of DNA profiling.” 23 Genomic scientists can point to impressive successes with regard to Mendelian (single-gene) diseases, and they focus even more on diagnoses and cures yet to come. Eric Lander, director of the Broad Institute, likens the trajectory of genomic medicine to the development of medicine based on the germ theory of disease, which “took about 75 years. With genomics, we’re maybe halfway through that cycle.” In his view, “the rate of progress is just stunning. As costs continue to come down, we are entering a period where we are going to be able to get the complete catalogue of disease genes.” Cancer is a prime target, almost in sight:“If you understand that this is a game of probability, and there is only a finite number of cancer cells and each has only a certain chance of mutating, and if we can put together two or three independent attacks on the cancer cell, we win. If we invest vigorously in this and we attract the best young people into this field, we get it done in a generation. If we don’t, it takes two generations.” Lander is “not Pollyanna .... [I]t’s not for next year. We play for the long game. I don’t want to overpromise in the short term, but it is incredibly exciting if you take the 25-year view.” 24 This is a classic statement of optimism, or being centered on advancement concerns. It begins with expertise and perspective, sees dangers and weaknesses, and nonetheless asserts empirical grounds for faith. President Obama’s insistence that “if you had to choose a moment in human history to live ... you’d choose now” has the same quality. My point is not that left pessimism is wrong—only that there are grounds, perhaps equally strong, for left optimism. One can choose either, and then find good evidence for that choice. Why Is Left Pessimism Problematic? That wily politician, Barney Frank, offers the best answer from the vantage point of the public arena: “When you tell your supporters that nothing has gotten better, and that any concessions you’ve received are mere tokenism, you take away their incentive to stay mobilized. As for those you’re negotiating with, if you denigrate anything they concede as worthless, they will soon realize they can obtain the same response by giving nothing at all.” 25 One can offer the same type of answer from the vantage point of a teacher. Many of us have had the experience of teaching a course—about civil war, inequality and politics, environmental policy, or the meaning of liberty—only to have our students politely request on the last day of class some idea or piece of information about which they can feel good or which they can use in their public engagement. We need to offer answers. Optimism may also be associated with academic success; one careful study found that“although achievement in mathematics was most strongly related to prior achievement and grade level, optimism and pessimism were significant factors. In particular, students with a more generally pessimistic outlook on life had a lower level of achievement in mathematics over time.” 26A study of college students similarly found that “dispositional and academic optimism were associated with less chance of dropping out of college, as well as better motivation and adjustment. Academic optimism was also associated with higher grade point average.” 27 And for those of us of a certain age, it is heartening to discover that “after adjusting for covariates, the results suggested that greater optimism [among middle-aged, predominantly white Americans] was associated with greater high-density lipoprotein cholesterol and lower triglycerides .... In conclusion, ... optimism is associated with a healthy lipid profile; moreover, these associations can be explained, in part, by the presence of healthier behaviors and a lower body mass index.” 28

**When Maxine wins this case, it’ll set a precedent in the courts that will MASSIVELY change antitrust jurisprudence**

**Pale 04** – R. Hewitt Pale, Former Assistant Attorney General, Antitrust Division @ US DOJ

(R. Hewitt Pale, “ANTITRUST LAW IN THE U.S. SUPREME COURT, Presented at British Institute of International and Comparative Law Conference, May 11, 2004, <https://www.justice.gov/atr/speech/antitrust-law-us-supreme-court>)

In considering my topic for a forum on comparative law, it occurred to me that it might be useful to focus on the special role of the United States Supreme Court in making American antitrust law. The topic is especially timely because our Supreme Court granted review in four antitrust cases this term, each of which is the object of intense study by U.S. antitrust practitioners. The Supreme Court, unlike the intermediate appellate courts of the federal system, has discretion to choose the cases it will hear, and its choices have a **profound effect** on **the development of antitrust law**.

Little has changed over the last century in terms of the wording of our antitrust statutes. The Sherman Act was enacted in 1890, and the Clayton Act in 1914, and the legislative amendments since that time have been minimal. Yet U.S. antitrust law has come a long way indeed in those years through judicial interpretations of the law. Congress chose not to enact detailed prescriptions for antitrust enforcement, relying instead on the courts to apply the broad statutory principles to particular fact situations. As former Assistant Attorney General William Baxter has observed, this "common law" approach may lack the certainty provided by a more detailed statute, but it "permits the law to adapt to new learning without the trauma of refashioning more general rules that afflict statutory law." (1) Our Supreme Court has described the antitrust laws as having "a generality and adaptability comparable to that found to be desirable in constitutional provisions."(2)

American antitrust law began to take shape only when the Supreme Court began to build the basic framework of antitrust analysis in its decisions. In 1911, it decided the landmark Standard Oil case, in which the United States sought to break up the famed oil conglomerate.(3) Observing that the standards of the antitrust law must be developed by the courts deciding each case "by the light of reason, guided by the principles of law and the duty to apply and enforce the public policy embodied in the statute,"(4) the Court announced the Rule of Reason, under which the Sherman Act is deemed to prohibit only "unreasonable" restraints of trade. In another decision that year, United States v. American Tobacco Co.,(5) involving a conglomerate in the tobacco industry, the Supreme Court emphasized the Rule of Reason's fundamental grounding in competition concerns. This standard proscribed "contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition or unduly obstructing the due course of trade or which, either because of their inherent nature or effect or because of the evident purpose of the acts, etc., injuriously restrained trade . . . ."(6)

In 1918, Chicago Board of Trade v. United States(7) made clear that the Rule of Reason encompasses all the relevant circumstances. To determine whether a restraint is illegal, a court must "ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable" and the "history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained."(8)

Around the same time, the Court was also developing the doctrine of per se illegality, which provides bright-line guidance as to certain clearly anticompetitive practices. In United States v. Trenton Potteries Co., (9) the Court held that a price fixing agreement among competitors is an unreasonable restraint "without the necessity of minute inquiry whether a particular price is reasonable or unreasonable."(10) In 1940, in another landmark case brought by the United States in the oil industry, United States v. Socony-Vacuum Oil Co.,(11) the Supreme Court repeated that price-fixing agreements are illegal per se and that "no showing of so-called competitive abuses or evils which those agreements were designed to eliminate or alleviate may be interposed as a defense."(12) The per se rule underpins the Antitrust Division's criminal prosecution of collusion among competitors.

The Supreme Court's pre-1950 decisions set the stage for the late twentieth-century developments in antitrust law. They established the fundamental principle — consistent with the modern approach worldwide — that antitrust laws prohibit only conduct that unreasonably restricts competition, to the detriment of consumers. And the Court established that the type of inquiry required depended on the nature of the particular conduct at issue.

That auspicious beginning did not mean that the course of American antitrust analysis always ran smoothly through the last half of the century. A consequence of the common law approach is that when antitrust thinking veers from the path of promoting consumer welfare, the Supreme Court may follow. We experienced that effect in the 1960s and 1970s as our Supreme Court issued decisions emphasizing artificial presumptions not soundly grounded in economic reasoning. In Brown Shoe, Pabst, and Von's Grocery, the Court ruled that mergers could be found unlawful based on extremely small increases in market concentration.(13) In Schwinn,(14) it abandoned its formerly cautious approach to vertical practices,(15) holding exclusive dealer territories unlawful per se. Similarly, in Albrecht,(16) it held vertical maximum price fixing illegal per se.

As the sophistication of economic analysis increased, our Supreme Court began to reexamine some of these precedents and return to fundamental principles of competition and consumer welfare. In GTE Sylvania,(17) the Court overruled Schwinn, and in State Oil v. Khan,(18) it overruled Albrecht. The Court adopted a significantly different approach to mergers in General Dynamics,(19) refusing to find a violation, despite current high market shares, in a case where those market shares did not reflect a realistic threat to future competition. And in Matsushita,(20) the Court poured cold water on theories of liability that make little economic sense, and it expressed skepticism of liability theories based on price cutting, which is often "the very essence of competition."(21)

Of particular note is the Court's decision in Brunswick,(22) in which it rejected the theory that a private plaintiff could obtain treble damages as compensation for continued competition resulting from a merger that prevented a firm from leaving the market. This may be one of the Supreme Court's lesser-known decisions outside the United States, but it is of fundamental significance. Private treble damage litigation is an important tool in the U.S. antitrust enforcement scheme, and the Brunswick decision mandated that it, like government enforcement, be firmly anchored to pro-competition, pro-consumer principles. The Court emphasized that private damages must be based on conduct causing injury of the type that the antitrust laws were intended to prevent. Plaintiffs may not prevail unless they are harmed by anticompetitive consequences of a defendant's conduct, for the antitrust laws were enacted to protect competition, not competitors.

In the last quarter of the twentieth century, the Supreme Court began hearing fewer antitrust cases. In part this reflects a general trend in the Court's practices. In its 2002 term, it issued only 81 written opinions, having issued only 71 the year before.(23) In contrast, thirty years earlier, the Court issued 164 written opinions in its 1972 term and 151 in 1971, including full opinions in ten antitrust cases during those two terms.(24) A litigant's chance of obtaining review today is quite low. In the last complete term, 2002, the Supreme Court considered 8,340 petitions for review by writ of certiorari, but granted full review to only 91 cases, or 1.1%.(25) Even if the unpaid, in forma pauperis, petitions are left out of the calculation, the odds improve only to 4.5%.(26)

A change in the statute governing appeals in civil antitrust cases brought by the government has also had the effect of limiting the number of Supreme Court opinions in antitrust cases in recent years. Until 1974, appeals in these cases went directly to the Supreme Court under the Expediting Act. That statute was amended in 1974 to provide that these appeals go to the intermediate appellate courts unless the district court certifies that immediate Supreme Court review is of "general public importance in the administration of justice."(27) Even then, the Court retains discretion to remand the case to the court of appeals. District courts have certified only three such cases for direct appeal.(28) One of these was Microsoft, but the Supreme Court declined to hear the case and remanded it to the court of appeals.

**Because there are so few Supreme Court antitrust decisions each year —** and because **each one sets precedent that will govern the application of** the **antitrust laws in** thelower courts for decades to come — **each decision is an event of major significance for antitrust enforcers and the antitrust bar. Every phrase is studied with care, and every future case is evaluated in terms of the Court's reasoning process.**

**That’ll cause Maxine AND her counterparts to win a SHIT TON of other cases.**

**Crowell & Moring 20** – Contributions from: Shawn R. Johnson, partner and co-chair of Crowell & Moring's Antitrust & Competition Group; Wm. Randolph Smith, partner in (and former chair of) the firm's Antitrust & Competition Group; Jeane A. Thomas, partner in Crowell & Moring's Antitrust & Competition and Privacy & Cybersecurity Groups, and co-chair of the firm's E-Discovery & Information Management Practice; Andrew I. Gavil, senior of counsel in Crowell & Moring’s Washington, D.C., office and is a member of the firm’s Antitrust & Competition Group; Gail D. Zirkelbach, partner in Crowell & Moring's Government Contracts and Investigations groups; Alexis J. Gilman, partner in Crowell & Moring’s Antitrust & Competition Group; Jason C. Murray, co-chair of the firm's Antitrust & Competition Group; Lisa Kimmel, senior counsel in Crowell & Moring's Antitrust & Competition Group; Thomas De Meese, co-managing partner of the firm's Brussels office.

Crowell & Moring, "Antitrust in the Digital Age: How Antitrust Investigations into Big Tech Impact Companies in Every Industry," Regulatory Forecast 2020, 2-26-2020, <https://www.crowell.com/files/Regulatory-Forecast-2020-Antitrust-Cover-Story-Crowell-Moring.pdf>

“The antitrust world hasn’t seen an issue this large in **decades**. **Unlike** every major antitrust development of the past, a look into Big Tech involves companies that may not charge customers anything and whose assets involve private consumer data that may not be able to be transferred as part of a remedy,” says Shawn Johnson, a partner at Crowell & Moring and co-chair of its Antitrust Group in Washington, D.C. “And this is not just about Big Tech. In the end, **all companies** are becoming digital. From how we view the role of data privacy to so-called killer acquisitions, these investigations are going to impact a **wide range of businesses** for **years to come**.”

While an imminent breakup of any Big Tech firm is unlikely, the **increased attention** to antitrust issues has **implications far beyond** the handful of companies that dominate the news. These new developments could affect **mergers**, **acquisitions**, and business **practices** in **virtually every sector**. That’s because competitive advantage today is often reliant upon access to key data, to online platforms, and to **cutting-edge technologies**—and antitrust legal and regulatory action sets the rules for such access.

“**This is a megatrend**,” says Wm. Randolph Smith, a partner at Crowell & Moring in Washington, D.C., former chair of the firm’s Antitrust Group, and a former executive assistant to the chairman of the FTC. “A confluence of events, including political philosophy, economic impact, and missteps on issues like privacy, is creating a shift in antitrust focus and thinking that could **reverberate into other sectors**.”

**And, it will breed more aggressive enforcement, compounding the risk of mergers everywhere**

**Geverola et al. 21** – Andre Geverola was the Director of Criminal Litigation in the Antitrust Division of the U.S. Department of Justice; Sonia Kuester Pfaffenroth was the Deputy Assistant Attorney General for Civil and Criminal Operations at the Antitrust Division of the US Department of Justice; Javier Ortega worked in the New York State Office of the Attorney General, Antitrust Bureau

Andre Geverola, Sonia Kuester Pfaffenroth, and Javier Ortega, "Buyer and Seller Beware: Criminal Antitrust Risks in Mergers & Acquisitions," Arnold & Porter, 7-26-2021, <https://www.arnoldporter.com/en/perspectives/publications/2021/07/criminal-antitrust-risks-in-m-and-a>

**Success Breeds Imitation**

DOJ’s success in the packaged-seafood investigation will **further embolden** its attorneys to scour through merger documents for signs of **potential criminal antitrust violations**. DOJ credited its civil attorneys’ keen eyes during the merger review, leading to the discovery of materials that resulted in the criminal investigation. DOJ formalized this practice in September 2020, when DOJ updated its civil investigative demand templates and deposition procedures to inform parties that their documents and testimony may be used in other proceedings, including criminal cases.

Importantly, **this risk is not limited to mergers** reviewed by DOJ. FTC coordinates with DOJ on many issues—for example, the two agencies recently announced their collaboration on a working group for reviewing pharmaceutical mergers. This collaboration historically has included referrals to DOJ of any potential criminal antitrust violations. The July 9 Executive Order is expected to increase coordination between the two agencies, including the pursuit of criminal antitrust violations uncovered by FTC.

Industries in Focus

As the packaged-seafood case study makes clear, failing to account for criminal antitrust risks can result in **significant financial losses** for companies and their investors, and individual liability for corporate executives. These risks are more acute in industries singled out in the July 9 Executive Order, which include agriculture, healthcare, and technology. In addition to these industries, the Executive Order also prescribed greater antitrust scrutiny in labor markets, affecting all employers. Companies conducting transactions in these industries and markets should be prepared for greater scrutiny of potential criminal antitrust violations.

**It will cause companies everywhere like Amazon and Google to freak out and stop innovative activity.**

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(Gary Dushnitsky and Daniel Sokol, “Competition laws could be a death knell for startup mergers and acquisitions,” 7/22/2021, The Hill, https://thehill.com/opinion/white-house/564321-competition-laws-could-be-a-death-knell-for-startup-mergers-and?rl=1)

Technology entrepreneurs and innovations yet to be imagined are in the crosshairs of misguided antitrust legislation. Antitrust policy is under the microscope from both political parties.

The Biden administration’s Executive Order on Promoting Competition in the American Economy lays the groundwork for the first-ever antitrust regulations for technology companies and internet platforms, and proposed legislation by Sens. Amy Klobuchar (D-Minn.) and Josh Hawley (R-Mo.) would rewrite antitrust law. Both bills and the order seek to limit merger activity focused on acquisitions of smaller companies by larger technology companies, with their proposals ranging from presuming anticompetitive effects to outright prohibitions.

However, these proposals likely will have unintended consequences that would hamper innovation and entrepreneurship. The result is that certain potential deals will never leave the boardroom and others will be abandoned because the risks of antitrust intervention are too high.

For deals that do move forward, many will be challenged under more stringent merger laws. Such a change in the law will fundamentally alter the ability of U.S. companies to innovate in the technology sector, and result in collateral damage across a wide range of traditional industries such as biotech, consumer goods and finance, along with sustainability-focused or previously neglected sectors.

#### Breaking up Apple will stop their acquisitions of smaller firms, that’s GOOD for tech innovation.

Kennedy ’20 [Joe; November 9; former chief economist for the U.S. Department of Commerce, Economics PhD from George Washington University, J.D. from the University of Minnesota; Information Technology and Innovation Foundation, “Monopoly Myths: Is Big Tech Creating “Kill Zones”?” https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones]

So-Called Kill Zones Could Maximize Welfare and Innovation

To the extent established companies are conducting research in a narrow market, it makes sense for entrants to avoid head-on competition and instead exploit complementary markets. This is almost as likely to be true whether the industry is dominated by one firm or five. Breaking into an industry with relatively mature technology dominated by large players is never easy. That is why many industries have gone through periods of heavy investment in the early stages of an industry as companies try to become one of the dominant players. Once the industry has matured to achieve economies of scale or network effects, new entrants tend to focus on complementary technology rather than trying to challenge the larger companies head-on.

Few complained after the 1930s automobile-sector start-ups declined precipitously. By the 1930s, it made little sense to invest in new automobile companies when it was clear the technology system (internal combustion engine) and major players (American Motors, Chrysler, Ford, and GM) had already been established. Investment to create new entrants would have represented a waste of societal resources. Instead, funding went to emerging industries such as radios, chemicals, and machine tools.

Today is no different. The technology and business models for search, social networks, and Internet retailing are relatively mature; society is better off if entrepreneurs and venture capitalists focus on other areas. Indeed, to the extent investors may be focusing their capital outside a few areas where large firms have established positions in what are somewhat mature technologies, it is arguably a good thing because it means there is more capital for other promising areas. Hathaway, in fact, acknowledged the possibility that “venture capital investment may have increased in non-tech sectors too, so that the tech giants have simply diverted the flow of capital to other areas.”25 The is buttressed by an earlier study by Oliver Wyman, which shows that acquisitions by Facebook, Google, and Amazon have not had a negative effect on the amount of venture capital flowing into tech industries.26 (See figures 1 and 2.)

Acquisitions Often Increase Innovation

There is often an assumption that acquisitions decrease innovation, but a number of studies suggest the opposite. A Dutch study looks at acquisitions in the manufacturing sector, which includes technology companies, and finds that both acquisitions and divestitures are positively correlated with increased innovation.27

Likewise, a paper by Igor Letina, Armin Schmutzler, and Regina Seibel argues that prohibiting killer acquisitions strictly reduces the variety of innovation projects in an industry because it deters innovation.28 They built a model in which prohibiting acquisitions has a positive effect on consumer surplus only if the bargaining power of the entrant is small and competition in the industry is not too intense, because both raise the incentives for an incumbent to do its own innovation rather than purchasing that of others. They cautioned:

While prohibiting acquisitions always has a strictly negative innovation effect in the case without commercialization (i.e. for killer acquisitions), it is not necessarily true for acquisitions with commercialization. Thus, even though killer acquisitions may appear to be particularly problematic, the case for prohibiting them is not necessarily stronger than for acquisitions with commercialization if one takes ex-ante innovation incentives into account.29

Moreover, Will Rinehart of the Center for Growth and Opportunity wrote that the large majority of acquisitions are motivated by the desire to purchase either the technology or the talent of the specific firm, rather than to stifle a potential rival.30 Sometimes termed “acqui-hires,” these acquisitions refer to when a company is acquired largely as a means to hire its workforce, and the newly hired team is often more productive after acquisition, in part because of economies of scope and increased resources.31 These acquisitions also often benefit both parties by integrating new technology into a broader network and helping the new firm scale up. They also benefit consumers by disseminating innovations more broadly. Rinehart related how Facebook’s purchase of Instagram was frequently mocked at the time. Since the purchase, Facebook has helped Instagram become a widely used platform.

Likewise, when Google purchased the start-up Keyhole, an innovative digital mapping company, (at the request of Keyhole founders), Google invested billions to improve and expand the mapping coverage. Bill Kilday, one of the founders of Keyhole, wrote that Google “gave them zero direction [and] unlimited resources.”32 In Keyhole’s early days, Kilday talked with someone who had an idea to do street-level mapping, complete with pictures. He estimated that because of the vast scale of it, coupled with an uncertain business model, it was essentially science fiction, not likely to be seen in his lifetime. Google, with its Street View project, did it in less than five years, providing it to consumers for free. Moreover, by acquiring Keyhole to help it create Google maps, Google disrupted an incumbent duopoly (MapQuest and TeleAtlas) that was charging for their products.

Moreover, the assumption there are many killer acquisitions does not seem to be borne out. One reason is they are seldom profitable. A mathematical model developed by Pehr-Johan Norbäck, Charlotta Olofsson, and Lars Persson predicts that companies will only purchase a new technology in order to kill it if the quality of the invention is small, otherwise the profit from introducing the technology is higher than the value of deterring its use.33 This incentive to acquire also falls when intellectual property rights are strong, thereby increasing the entrant’s commercial value. Likewise, a paper by Axel Gautier and Joe Lamesch that surveyed acquisitions by Google, Amazon, Facebook, Microsoft, and Apple finds that out of 175 acquisitions in the 2015–2017 period the paper surveys, only one qualified for being a potential “killer” acquisition: Facebook’s acquisition of a photo-sharing app called Masquerade, which had raised just $1 million in funding before being acquired.34

#### Tech platforms like Apple should remain BIG. Their size allows them to innovate at a rapid pace!

Jan Rybnicek 20—Antitrust Attorney, former Advisor at FTC, Editor for the Antitrust Law Journal. ("Innovation in the United States and Europe," November 11, 2020, from The Global Antitrust Institute Report on the Digital Economy 13, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3733698>) edited for ableist language

A key indicator of a vibrant economy that is characterized by vigorous competition and intense innovation is high levels of spending on research and development. Research and development fuels economic growth, job creation, and competition by allowing researchers and entrepreneurs to discover new technologies, design new products, tap new markets, and improve efficiency and enhance performance. Critics of U.S. competition policy have argued that today’s largest firms have become so large that they are untouchable by competition from current or future rivals and, as a result, have lost the incentive to innovate that once may have been part of their core identity as scrappy upstarts but that has since faded as they rest on their laurels, happy in their dominant positions.37 They further argue that dominant firms snuff out would-be entrants that otherwise would be devoting capital to research and development initiatives to build competing offerings for consumers.38 These critics allege that this purported dampening in the incentive to innovate has deprived consumers of better products and services that would otherwise arise through the push and pull of competition.

But the actual data tell a different story about the state of research and development in the United States and how it compares to its counterparts in Europe. In fact, companies in the United States lead the world in research and development. As shown in Figure 6, out of the top companies globally investing in research and development spending, 11 out of the top 20 (55 percent) and seven out of the top 10 (70 percent) are based in the United States as of 2018.39 By comparison, only six of the top 20 are located in Europe (30 percent), and only two find themselves in the top 10 (20 percent). The remaining firms on the list based on research and development spend are based in Asia.

Contrary to critics’ claims, there is no lack of research and development in the United States, and U.S. firms continue to outpace global counterparts in investing in new technologies and products. The reality is that companies in the United States invest in a broad range of research and development initiatives despite the presence of large, successful tech companies. Unsurprisingly, just as no one today would invest in developing a new combustion engine-powered car that would have to compete against established and mature competitors that have considerable expertise in the market, it would be unwise to try to compete against any of the large tech companies with a “me too” product. Instead, innovators (and, as discussed below, the venture capital and other sources of capital that fund them) devote resources to discovering new and different solutions that may indirectly replace incumbents by disrupting old markets and creating new ones. Indeed, this how many of today’s most successful tech firm achieved success— by building new products and creating new markets, not by mimicking yesteryear’s giants, such as IBM, Microsoft, and Intel.

A closer look at research and development investment in the United States further shows that tech firms are leading the way. In fact, many of the tech firms that have allegedly contributed to the decline of competition and innovation in the United States are the biggest spenders. As shown in Figure 7, Amazon, Alphabet, Intel, Microsoft, and Apple comprise the nation’s topic five spenders, with investments totaling more than $75 billion in 2018.40 These companies are pouring money into innovation not because they have nothing else to do with it but because they are attempting to stay ahead of the competition in their core markets by introducing even better products and services, and to break into adjacent markets where they see opportunities to use their expertise to be disruptive forces.

**Maxine’s victory undermines industry dealmaking in every industry---automatic treble damages make transactions far too risky**

**Delrahim**, JD, former Assistant Attorney General for the Antitrust Division of the United States Department of Justice, **‘20**

(Makan, “Assistant Attorney General Makan Delrahim Delivers Remarks at IAM’s Patent Licensing Conference in San Francisco,” September 18, <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-iam-s-patent-licensing>)

It **can be a serious mistake** for a court to allow either type of claim to proceed under the Sherman Act. To understand why that is the case, one should consider the policies underlying Section 2 of the Sherman Act.

One crucial element in establishing any claim of unlawful monopolization under Section 2 is a showing that a defendant acquired, enhanced, or maintained monopoly power in the relevant market through anticompetitive conduct that is “exclusionary” or “predatory” in nature. I will focus on so-called “exclusionary” conduct—the umbrella concept often invoked by licensees bringing Section 2 claims premised on FRAND violations.

The term exclusionary conduct in antitrust law is potentially misleading because there is a difference under the Sherman Act between “lawful” and “unlawful” conduct that results in exclusion of a competitive alternative. In market economies, every rational business wants to exclude and defeat its competitors, and indeed antitrust law encourages fierce competition among companies aiming for as high a market share as they can achieve. That is why courts applying Section 2 are careful not to condemn **“exclusionary” conduct** that is driven by **competition on the merits** such as **innovation**. Most obviously, **legitimate competition** on the merits **can be “exclusionary”** in the sense that consumers choose a superior product or service. That conduct does not violate Section 2. By comparison, conduct that “excludes” a competitor by hindering its ability to offer a superior product or service, without offering any benefit to competition, likely would constitute a Section 2 violation.

When courts **police the line between lawful and unlawful “exclusionary” conduct**, a few themes emerge.

First, courts have recognized that not every type of conduct that may enhance a business’s market power is actionable, such as when the application of Section 2 would impose a duty that contravenes the policies of the antitrust laws themselves. For example, in Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, the plaintiff alleged that Verizon refused to deal with a rival in order to limit competitive entry, thereby enhancing its monopoly position. The Supreme Court held that the claim did not satisfy Section 2 as a matter of law. That is because the claim would condemn a monopolist’s refusal to share its resources and effectively would create an antitrust duty to help a competitor. Such a duty, the Court explained, is in “tension with the underlying purpose of antitrust law, since it may lessen the incentive for the monopolist, the rival, or both to invest in those economically beneficial facilities.” The Court applied a legal rule, rather than a fact-specific rule, to protect conduct that may have an exclusionary, monopoly-enhancing effect.

Second, the Supreme Court has cautioned against antitrust standards that would create an **unacceptable risk of “false positives”** or condemnations of lawful pro-competitive conduct. As the Court has explained, “**Mistaken inferences** and the resulting **false condemnations** ‘**are especially costly**, because they **chill the very conduct** the antitrust laws are designed to protect.’” Judge Robert Bork, in his famous Antitrust Paradox, highlighted the same risk in the application of Section 2 theories, explaining with respect to exclusive dealing that “[t]he real danger for the law is less that predation will be missed than that normal competitive behavior **will be wrongly classified** as predatory and suppressed.”

**This backdrop helps frame the question** whether a unilateral refusal to license a lawful patent on “FRAND” terms after committing to do so constitutes a form of **unlawful exclusionary conduct.** A unilateral violation of a FRAND commitment should not give rise to a cause of action under Section 2 of the Sherman Act, even if a patent holder is alleged to have misled or deceived a standard-setting organization with respect to its licensing intentions. Applying Section 2 to this sort of unilateral conduct would contravene the underlying policies of the antitrust laws. This conduct may **warrant remedies under contract law,** **but the important difference is that contract remedies do not involve the threat of treble damages** that can deter lawful, pro-competitive conduct.

In the context of legitimate standard setting, the collective decision to incorporate a patented technology into a standard necessarily involves the “exclusion” of rival technologies. Moreover, as a result of having its technology incorporated into a standard, a patent holder may gain incremental market power beyond any power that holding a patent would already convey. By voluntarily participating in the standard setting process, however, owners of rival technologies and prospective licensees assume the risk that the outcome of that process may have an exclusionary effect where there are patents covering the “winning” technology. Simply winning selection by a standard setting process does not constitute unlawful exclusionary conduct under the antitrust laws. This is because that selection, regardless the reason for it, contributes to unification around a single standard, which creates interoperability benefits for consumers that could not be achieved without unification.

This form of lawful and pro-competitive exclusionary conduct should not be condemned as unlawful under the Sherman Act when a licensee believes that a patent-holder opportunistically has reneged on its commitment to license on “FRAND” terms and engaged in so-called “hold-up.” That is also true even where a patent holder never allegedly intended to license on the terms that a court ultimately determines are “FRAND.” I will explain why.

There is no duty under the antitrust laws for a patent holder to license on FRAND terms, even after having committed to do so. A FRAND commitment is a contractual representation that a patent holder will license on “fair,” “reasonable,” and “non-discriminatory” terms. It is not the same as a promise to pay a specific price in a final contract. Indeed, commentators have noted that by failing to specify a specific price, a FRAND commitment is an incomplete contract term.

To be clear, a FRAND commitment may create a duty under contract law to fulfill that obligation, and courts may be tasked with determining the relevant FRAND rate where parties disagree over this contract term. Section 2, however, is agnostic to the price that a patent-holder seeks to charge after committing to such a term. Breaking down “FRAND” by its component terms makes clear why this is so.

First, the Sherman Act does not police “fair” prices or competition; it protects the competitive process. Judge Easterbrook once asked, “Who says that competition is supposed to be fair, that we judge the behavior of the marketplace by the ethics of the courtroom? . . . When economic pressure must give way to fair conduct . . . rivals will trim their sails”; introducing conceptions of “fairness” into the Sherman Act “is to turn antitrust law on its head.”

Second, having undertaken a contractual duty to charge “nondiscriminatory” rates, the Sherman Act does not compel a patent-holder to abide by this promise. The Sherman Act is indifferent to price discrimination; indeed, in some circumstances price discrimination may be pro-competitive.

Third, the Sherman Act does not authorize courts to determine “reasonable” licensing rates. The Supreme Court has emphasized repeatedly that antitrust law does not recognize a cause of action that would “require[] antitrust courts to act as central planners, identifying the proper price, quantity, and other terms of dealing—a role for which they are ill-suited.”

It, therefore, would be a mistake to infer that a contractual FRAND commitment somehow establishes a duty under the antitrust laws to license on terms demanded by a licensee or that violations of an ambiguous FRAND term become an antitrust violation. **Transforming such a contract obligation into an antitrust duty** would undermine the purpose of the antitrust laws and the patent laws themselves, both of which serve the same goal of **increasing dynamic competition** by fostering **greater investment** in research and development, and **ultimately in innovation**.

Making the duty to license on FRAND terms enforceable under the antitrust laws would contravene the policies of the Sherman Act. As the Supreme Court recognized in Trinko, a business has no antitrust duty to deal with another company, and only in limited circumstances will a refusal to deal give rise to a potential antitrust claim. As then-Tenth Circuit Judge Neil Gorsuch explained in Novell v. Microsoft, following Trinko, a monopolist’s refusal to license its intellectual property is actionable under the antitrust laws only if it terminates a “presumably profitable course of dealing between the monopolist and the rival” and that termination is “irrational but for its anticompetitive effect.”

I would note that then-Judge Gorsuch’s standard echoes what the United States and FTC advocated to the Supreme Court in its amicus brief in the Trinko case. The brief stated:

Where, as here, the plaintiff asserts that the defendant was under a duty to assist a rival, the inquiry into whether conduct is “exclusionary” or “predatory” requires a sharper focus. In that context, conduct is not exclusionary or predatory unless it would make no economic sense for the defendant but for its tendency to eliminate or lessen competition.

That narrow window for a refusal to deal claim is irreconcilable with the broader contention that Section 2 obligates an SEP-holder subject to a contractual FRAND commitment to license its technology to any comer—much less on FRAND terms. An antitrust duty to license on FRAND terms would also contravene the patent laws’ policy of promoting innovation by offering incentives for holders of valid patents to seek the greatest rewards possible for their inventions.

To be clear, contract law may very well require an SEP-holder to deal with any willing licensee, but the Sherman Act does not convert FRAND commitments into a compulsory licensing scheme. It logically follows that there is no antitrust liability for proposing to deal at terms that are above FRAND rates.

Nor should an antitrust duty spring into being if a patent holder allegedly “deceives” an SSO when it commits to license on FRAND terms and its participants rely on that representation in deciding to adopt the technology. That is because Section 2 should not condemn a patent holder’s profit-maximizing intentions or aspirations at the time it makes a FRAND commitment, particularly where remedies are already available to an unhappy licensee or SSO participant.

Suppose that, hypothetically, the holder of a standard-essential patent knew upfront precisely what price would satisfy the vague definition of “FRAND” and planned to demand a much higher price after the SSO incorporated its technology into a standard. By making a legally binding commitment, a patent-holder acknowledges that it will be required under contract law to license at a rate determined by a court if a disagreement over that rate arises later. A licensee, for its part, understands that it can bring suit if a price does not fit its own subjective understanding of “FRAND.” Because both patent-holders and licensees participating in a standard-setting process recognize that the proper “FRAND” rate will be determined after the fact—in court, if necessary—there is therefore no meaningful ex ante “deception” that should give rise to an antitrust claim.

To be sure, having one’s technology incorporated into a standard, in some circumstances, may increase a patent-holder’s market power. The same could be said, of course, about a monopolist’s refusal to deal with a rival who might gain market share if it had access to the monopolist’s inputs. Even if this occurs as a result of a patent holder’s so-called “deception” about its licensing obligations, this is not the sort of market-power-enhancing conduct that Section 2 should reach because a cause of action for treble damages would impede the policies underlying the Sherman Act. Even worse, such a cause of action would “require[] the court to assume the day-to-day controls characteristic of a regulatory agency.”

**More fundamentally**, recognizing a Section 2 cause of action for violations of a FRAND commitment would create an **unacceptable risk of “false positive” condemnations** of pro-competitive conduct by licensees. **The prospect of antitrust liability and treble damages** for breaching a potentially vague FRAND term—or allegedly “misrepresenting” one’s intentions to offer some FRAND rate—threatens to **chill incentives for innovators** to develop new technologies that fuel dynamic competition.

**Where contract law remedies exist** to remedy and deter breaches of a FRAND commitment, **the additional deterrence that Sherman Act remedies offer could deter lawful, pro-competitive conduct**—that is, **research and development** by innovators who make careful cost-benefit calculations as to **how much to invest in technologies** that **may not pay off**. Demanding a high price for one’s patented technology is permissible, and expected, conduct in a free market negotiation. A Section 2 cause of action would **skew the** patent licensing **bargain** away from the bargaining outcome that a free market dictates.

In particular, where the parties have a subjective disagreement over the meaning of an incomplete contract term, a Section 2 remedy threatens the patent holder with the risk of **enormously costly litigation** and a **possible treble damages award**. **Bargaining in the shadow of litigation**, a patent holder would be wary that a high license demand could be penalized **by a significant damages award**, **whereas a prospective licensee’s low-ball offer would do no such thing**. Such a remedy would bestow any putative licensee with **disproportionate negotiating power.** In turn, the **cost-benefit calculation for innovators would change and the prospect of additional dynamic competition likely would decline**.

#### They provide a safe exit option and encourage *more innovation*

Jennifer Huddleston & Juan Londoño 21—Director of Technology and Innovation Policy at the American Action Forum; Technology & Innovation Policy Analyst at the American Action Forum. ("Technology and Telecommunications Policy in the Executive Order on “Promoting Competition in the American Economy”," July 12, 2021, from AAF, https://www.americanactionforum.org/insight/technology-and-telecommunications-policy-in-the-executive-order-on-promoting-competition-in-the-american-economy/)

This argument provides an extremely limited vision of the dynamics and the benefits of mergers for both big and small players, but, more important, for consumers. For entrepreneurs and innovators, mergers and acquisitions provide an exit option when they lack of financial resources, marketing power, regulatory burdens, or a desire for expansion becomes a barrier for further growth. Merging or being acquired allows these innovators to receive compensation for their idea and can result in teams that may be able combine talents more easily. Mergers also allow those innovators who desire to move on and start another innovative product to do so with valuable seed capital from a prior acquisition. For their part, big companies receive valuable talent and product improvements. But it is not just the businesses that benefit from mergers and acquisitions. Consumers benefit from having access to better products and services that could possibly not exist had the merger not taken place. The focus of merger analysis should remain on the impact on consumer welfare, not on a belief that a certain number of competitors determined by policymakers rather than the market is ideal.

The reasoning for allowing challenge of past mergers often focuses on whether mergers such as Instagram and Facebook or Google and DoubleClick received the appropriate scrutiny. But focusing on past unchallenged mergers could also impact future, consumer-benefitting mergers by deterring risky acquisitions harming small developers in the process. The counterfactual of how a company would have evolved without a merger is often difficult to know and will have to rely on multiple assumptions that would be difficult to prove with any empirical evidence.

# 2NR

## Innovation DA

**Only Hegemony solves Chinese aggression. The key to stability is convincing them that the US is willing to run the risk of escalation. Otherwise, they will be provocative to extract concessions.**

**Mastro 15** – Professor of IR & Security Studies at Georgetown University

Oriana Skylar Mastro, assistant professor at the Edmund A. Walsh School of Foreign Service, Georgetown University, Why Chinese Assertiveness is Here to Stay, The Washington Quarterly 37:4, pp. 151–170, <http://dx.doi.org/10.1080/0163660X.2014.1002161>

The U.S. mindset needs to shift to **accept greater risk** without being reckless. **Military power alone does not guarantee a credible deterrent**. U.S. efforts to bolster its military presence in the Asia–Pacific—a central pillar of the rebalancing strategy—counter the geographic, kinetic and political pillars of China’s A2/AD strategy. For example, the United States is forward-deploying more assets in the region, such as the Marine Air Ground Task Force Detachment already deployed to Australia as well as the stated goal of positioning 60 percent of all U.S. warships to the Asia–Pacific by 2020. This addresses the geographic pillar. Attempts to address the kinetic pillar include new operational concepts such as Air-Sea Battle, which “relies on highly integrated and tightly coordinated operations across war-fighting domains” in order “to disrupt and destroy enemy A2-AD networks and their defensive and offensive guided weapons systems in order to enable US freedom of action to conduct concurrent and follow-on operations.”73 Bolstering U.S. alliances with Japan, South Korea, Australia, the Philippines, and Thailand, as well as partnerships with Indonesia, Malaysia, India, Singapore, Vietnam, and New Zealand are critical components to U.S. efforts to ensure political access and support in the region. These efforts are commendable—the United States rightly works to preserve its military superiority and retain its ability to project power in the region. During the Cold War, when the greatest pacing threats were land conflicts, forward deploying U.S. forces in Europe and Asia were sufficient to demonstrate the credibility of the U.S. commitment to peace in those regions. But **China is currently testing the waters not because its leaders are uncertain about the balance of power**, **but because they are probing the balance of resolve**. This means that **staying ahead in terms of military might is insufficient** in contemporary East Asia. **China’s strategists are betting that the side with the strongest military does not necessarily win the war**—the **foundation** of the **deterrent pillar of its A2/AD strategy**. Indeed, China’s experience in fighting the Korean War proves that a country willing to sacrifice blood and treasure can overcome a technologically superior opponent. The **belief that balance of resolve drives outcomes more so than the balance of power** is the **foundation of China’s new, more assertive strategy**; but U.S. responses to date have failed to account for it. Canned demonstrations of U.S. power fail to address the **fundamental uncertainty** concerning **U.S. willingness, not ability, to fight.** The U.S. **focus on de-escalation** in all situations only **exacerbates** this issue. The Cold War experience solidified the Western narrative stemming from World War I that inadvertent escalation causes major war, and therefore crisis management is the key to maintaining peace.74 This has created a situation in which the main U.S. goal has been de-escalation in each crisis or incident with Beijing. But **Chinese leaders do not share this mindset**—**they believe leaders deliberately control the escalation process** and **therefore wars happen because leaders decide** at a given juncture that the **best option is to fight**.75 China is masterful at **chipping away at U.S. credibility** through advancing militarization and coercive diplomacy. It often **uses limited military action** to **credibly signal its willingness to escalate** if its **demands are not met**. Strategist Thomas Schelling theoretically captured this approach when he wrote it is “the sheer inability to predict the consequences of our actions and to keep things under control … that can intimidate the enemy.”76 Because **China introduces risk for exactly this reason**, the **U.S. focus on deescalation** through crisis management is **unlikely to produce any change in Chinese behavior**—if anything it will **only encourage greater provocations**. Beijing has **identified the U.S. fear of inadvertent escalation**, and is **exploiting it** to **compel the United States to give in to its demands** and preferences. In this way, the U.S. focus on de-escalation may actually be the **source of instability** by **rewarding** and **encouraging further Chinese provocations**. To **signal to China that the United States will not opt out of a conflict**, Washington must **signal willingness to escalate** to higher levels of conflict **when China is directly and purposely testing U.S. resolve**. This may include reducing channels of communication during a conflict, or involving additional regional actors, to **credibly demonstrate** that **China will not be able to use asymmetry of resolve to its advantage.** The current mindset—that crisis management is the answer in all scenarios— will be difficult to dislodge, given the tendency among U.S. military ranks to focus on worst-case “great battle” scenarios. While realistic in Cold War operational planning, decision makers should consider instead the less violent and prolonged engagements that characterize Chinese coercive diplomacy when evaluating risk and reward, such as the 1962 Sino–Indian War or the 1974 Battle of the Paracel Islands. The idea that any conflict with China would escalate to a major war, destroy the global economy, and perhaps even **escalate to** a **nuclear exchange** has **no foundation in Chinese thinking**, and **causes the United States to concede in even the smallest encounters**. While **the Chinese leadership has proven to be more risk-acceptant** than the United States (or perhaps more accurately, to assess the risks to be less than those perceived by U.S. strategists), **Xi still wants to avoid an armed conflict** at this stage. In his November 2014 keynote address at the Central Foreign Affairs Work Conference, he noted that China remains in a period of strategic opportunity in which efforts should be made to maintain the benign strategic environment so as to focus on internal development.77 Ultimately, the U.S. regional objective must be peace and stability at an acceptable cost. Given this, it is critical to understand the four components of China’s A2/AD strategy, the strategic foundation for China’s recent assertiveness, and how best to maintain the U.S. position as a Pacific power. In addition to regularly attending meetings in the region and developing new technology, new platforms, and new operational concepts designed to defeat China’s A2/AD strategy, the United States needs to break free of its Cold Warbased paradigm paralysis and rethink conceptions of limited war, escalation, and risk. Scolding China and imposing symbolic costs for each maritime incident is unlikely to **inspire the corrective change** U.S. thinkers are hoping for. The United States needs to fundamentally change its approach by **accepting higher risk** and **allowing for the possibility of escalation**—both vertically in force as well as horizontally to include other countries. This admittedly is a difficult balance, especially given the need to avoid emboldening U.S. allies to take actions that run contrary to U.S. interests. But only by mastering these two balancing acts—focusing on **balancing resolve**, rather than forces, and **prioritizing stability over crisis management**—will the United States be able to **maintain peace and stability in East Asia** **without sacrificing U.S. or allied interests.**

**No reps impact OR self-fulfilling prophecy.**

**Goddard & Krebs 15** –Jane Bishop ’51 Associate Professor of Political Science at Wellesley College; Beverly and Richard Fink Professor in the Liberal Arts and Associate Professor of Political Science at the University of Minnesota

Stacie E. Goddard, Ronald R. Krebs, Duck of Minerva, September 18, 2015, “Securitization Forum: The Transatlantic Divide: Why Securitization Has Not Secured a Place in American IR, Why It Should, and How It Can”, <http://duckofminerva.com/2015/09/securitization-forum-the-transatlantic-divide-why-securitization-has-not-secured-a-place-in-american-ir-why-it-should-and-how-it-can.html>

\* modified for ableist language

But there are (good) substantive and (not so good) sociological reasons that securitization has failed to gain traction in North America. First, and most important, securitization describes a process **but leaves us well short of** (a) **a** fully specified **causal theory** that (b) takes proper account of the politics of rhetorical contestation. According to the foundational theorists of the Copenhagen School, actors, usually elites, transform the social order from one of normal, everyday politics into a Schmittian world of crisis by identifying a dire threat to the political community. They conceive of this “securitizing move” in linguistic terms, as a speech act. As Ole Waever (1995: 55) argues, “By saying it [security], something is done (as in betting, a promise, naming a ship). . . . [T]he word ‘security’ is the act . . .” [emphasis added]. Securitization is a powerful discursive process that constitutes social reality. Countless articles and books have traced this process, and its consequences, in particular policy domains.

Securitization presents itself as a causal account. But its mechanisms remain obscure, as do the conditions under which it operates. Why is speaking security so powerful? How do mere words twist and transform the social order? Does the invocation of security prompt a visceral emotional response? Are speech acts persuasive, by using well-known tropes to convince audiences that they must seek protection? Or does securitization operate through the politics of rhetorical coercion, silencing potential opponents? **In securitization accounts**, **speech acts often seem to be magical incantations** **that upend normal politics through pathways shrouded in mystery.**

Equally unclear is why some securitizing moves resonate, while others ~~fall on deaf ears~~ [are ignored]. Certainly **not all attempts to construct threats succeed**, and this is true of both traditional military concerns as well as “new” security issues. Both neoconservatives and structural realists in the **U**nited **S**tates have **long insisted** that **conflict with China is inevitable, yet China has over the last 25 years been more opportunity than threat in US political discourse**—**despite** these vigorous and **persistent securitizing moves.** In very recent years, the balance has shifted, and the China threat has started to catch on: **linguistic processes alone cannot account for this change.** The US military has repeatedly declared that global climate change has profound implications for national security—but that has hardly cast aside climate change deniers, many of whom are ironically foreign policy hawks supposedly deferential to the uniformed military. Authoritative speakers have varied in the efficacy of their securitizing moves. While George W. Bush powerfully framed the events of 9/11 as a global war against American values, **F**ranklin **D**elano **R**oosevelt, a more gifted orator, struggled to convince a skeptical public that Germany presented an imminent threat to the United States. After thirty years as an active research program, **securitization theory has hardly begun to offer acceptable answers to these questions. Brief references to “facilitating conditions” won’t cut it.** You don’t have to subscribe to a covering-law conception of theory to find these questions important or to find securitization’s answers unsatisfying.

A large part of the problem, we believe, lies in securitization’s ~~silence on~~ [disregard of] the politics of security. Its **foundations in speech act theory** have **yielded an oddly apolitical theoretical framework**. In its seminal formulation, the Copenhagen school emphasized the internal linguistic rules that must be followed for a speech act to be recognized as competent. Yet as Thierry Balzacq argues, by treating securitization as a purely rule-driven process, the Copenhagen school ignores the politics of securitization, reducing “security to a conventional procedure such as marriage or betting in which the ‘felicity circumstances’ (conditions of success) must fully prevail for the act to go through” (2005:172). Absent from this picture are fierce rhetorical battles, **where coalitions counter securitizing moves with their own appeals** that strike more or less deeply at underlying narratives. Absent as well are the public intellectuals and media, who **question** and critique **securitizing moves** sometimes (and not others), sometimes to good effect (and sometimes with little impact). **The audience** itself—whether the mass public or a narrower elite stratum—**is stripped of all agency**. **Speaking security**, even when the performance is competent, **does not sweep** this **politics away. Only by delving into** this **politics can we shed light on** the mysteries of **securitization.**

We see rhetorical politics as constituted less by singular “securitizing moves” than by “contentious conversation”—to use Charles Tilly’s phrase. To this end, **we** would **urge** securitization **theorists**, as we recently have elsewhere, **to move towards a “pragmatic” model** that rests on four analytical wagers: that actors are both strategic and social; that legitimation works by imparting meaning to political action; that legitimation is laced through with contestation; and that the power of language emerges through contentious dialogue.

**No endless intervention --- Cold War and Iraq syndrome proves.**

**Brooks et al. 12** (John Ikenberry, Ph. D in Political Science from Chicago, Professor of Politics and International Affairs at the Woodrow Wilson School at Princeton University, Senior Fellow at the Brookings Institute, Co-Director of Princeton’s Center for International Security Studies; William Wohlforth, Ph. D in Political Science from Yale, Webster Professor of Government at Dartmouth College; Stephen Brooks, Ph. D in Political Science from Yale, Associate Professor of Government at Dartmouth College, Senior Fellow at the Belfer Center for Science and International Affairs at Harvard University; “Don’t Come Home, America”, http://www.carlanorrlof.com/wp-content/uploads/2013/03/DontComeHomeAmerica.pdf)

For many advocates of retrenchment, the mere possession of peerless, globe-girdling military capabilities leads inexorably to a dangerous expansion of U.S. definitions of national interest that then drag the country into expensive wars.64 For example, sustaining ramified, long-standing alliances such as NATO leads to mission creep: the search for new roles to keep the alliance alive. Hence, critics allege that NATO’s need to “go out of area or out of business” led to reckless expansion that alienated Russia and then to a heedless broadening of interests to encompass interventions such as those in Bosnia, Kosovo, and Libya. In addition, peerless military power creates the temptation to seek total, non-Clausewitzian solutions to security problems, as allegedly occurred in Iraq and Afghanistan.65 Only a country in possession of such awesome military power and facing no serious geopolitical rival would fail to be satisfied with partial solutions such as containment and instead embark on wild schemes of democracy building in such unlikely places. In addition, critics contend, the United States’ outsized military creates a sense of obligation to use it if it might do good, even in cases where no U.S. interests are engaged. As Madeleine Albright famously asked Colin Powell, “What’s the point of having this superb military you’re always talking about, if we can’t use it?” Undoubtedly, possessing global military intervention capacity expands opportunities to use force. If it were truly to “come home,” the United States would be tying itself to the mast like Ulysses, rendering itself incapable of succumbing to temptation. Any defense of deep engagement must acknowledge that it increases the opportunity and thus the logical probability of U.S. use of force compared to a grand strategy of true strategic disengagement. Of course, **if the alternative to deep engagement is an over-the-horizon intervention stance**, then the temptation risk **would persist after retrenchment**. The main problem with the interest expansion argument, however, is that it essentially boils down to one case: **Iraq**. Sixty-seven percent of all the casualties and 64 percent of all the budget costs of all the wars the United States has fought since 1990 were caused by that war. Twenty-seven percent of the causalities and 26 percent of the costs were related to Operation Enduring Freedom in Afghanistan. All the other interventions—the 1990–91 Persian Gulf War, the subsequent airstrike campaigns in Iraq, Somalia, Bosnia, Haiti, Kosovo, Libya, and so on—**account for 3 percent of the casualties** and 10 percent of the costs.66 Iraq **is the outlier** not only in terms of its human and material cost, but also in terms of the degree to which the overall burden was shouldered by the United States alone. As Beckley has shown, in the other interventions allies either spent more than the **U**nited **S**tates, suffered greater relative casualties, or both. In the 1990–91 Persian Gulf War, for example, the United States ranked fourth in overall casualties (measured relative to population size) and fourth in total expenditures (relative to GDP). In Bosnia, European Union (EU) budget outlays and personnel deployments ultimately swamped those of the United States as the Europeans took over postconflict peacebuilding operations. In Kosovo, the **U**nited **S**tates **suffered one combat fatality**, the sole loss in the whole operation, and it ranked sixth in relative monetary contribution. In Afghanistan, the **U**nited **S**tates is the number one financial contributor (it achieved that status only after the 2010 surge), but its relative combat losses rank fifth.67 In short, **the interest expansion argument would look much different without Iraq in the picture.** There would be no evidence for the **U**nited **S**tates **shouldering a disproportionate share of the burden**, and the overall pattern of intervention would look “unrestrained” **only in terms of frequency, not cost**, with the debate hinging on whether the surge in Afghanistan was recklessly unrestrained.68 How emblematic of the deep engagement strategy is the U.S. experience in Iraq? The strategy’s supporters insist that Iraq was a Bush/neoconservative aberration; certainly, there are many supporters of deep engagement who strongly opposed the war, most notably Barack Obama. Against this view, opponents claim that it or something close to it was inevitable given the grand strategy. Regardless, the more important question is whether continuing the current grand strategy condemns the **U**nited **S**tates **to more such wars**. The Cold War experience **suggests a negative answer**. After the **U**nited **S**tates suffered a major disaster in Indochina (to be sure, dwarfing Iraq in its human toll), it responded by waging the rest of **the Cold War using proxies** and highly limited interventions. Nothing changed in the basic structure of the international system, and U.S. military power recovered by the 1980s, yet the **U**nited **S**tates **never again undertook a large expeditionary operation** until after the Cold War had ended. All indications are that **Iraq has generated a similar effect for the post–Cold War era**. If there is an Obama doctrine, Dominic Tierney argues, it can be reduced to “No More Iraqs.”69 Moreover, the president’s thinking is reflected in the Defense Department’s current strategic guidance, which asserts that “U.S. forces will no longer be sized to conduct large-scale, prolonged stability operations.”70 Those developments in Washington are also part of a wider rejection of the Iraq experience across the American body politic, which political scientist John Mueller dubbed the “Iraq Syndrome.”71 **Retrenchment advocates would need to present much more argumentation and evidence to support their pessimism on this subject.**