# 1AC

### 1AC – Cooperation

#### Conflicting federal antitrust standards on standard essential patents (SEPs) cause DOJ-FTC turf wars – drives industrial and international uncertainty which wrecks harmonization, and decimates growth

McGinnis and Sun, 21 – John O. McGinnis, Professor at Northwestern University and Linda Sun, Associate at Wilmer Pickering Hale & Dorr LLP and J.D. 2020 at Northwestern Pritzker School of Law, Winter, “Unifying Antitrust Enforcement for the Digital Age,” *78 Wash. & Lee L. Rev. 305*, p. Nexis – Iowa

1. Standard-Essential Patents: A Case Study in Incoherence

Turf battles aside, the FTC and the DOJ have promoted directly opposing policies regarding the application of antitrust law to technology.138 The contentious disagreement on the important issue of standard-essential patents shows the divergent treatment and uncertainty already generated by dual enforcement. The FTC believes violation of a SEP licensing agreement is potentially an antitrust violation.139 Standard-setting organizations often require patent holders to license SEPs for free or on fair, reasonable, and non-discriminatory (FRAND) terms.140 The FTC argues that a violation of these licensing terms can violate antitrust laws by enabling a patent holder to “parlay the standardization of its technology into a monopoly in standard-compliant products.”141 The DOJ disagrees, because it believes “it is not the duty or the proper role of antitrust law to referee what unilateral behavior is reasonable for patent holders in this context.”142 The DOJ argues that patent holders enjoy a government-granted monopoly over the item under patent.143 Thus, a violation of a SEP licensing agreement may raise an issue of contract law or other common law right, but not antitrust.144

SEPs are vital to technological innovation and economic growth, with billions of dollars at stake.145 To understand the importance of SEPs to technology, one must first understand the importance of a standard. A standard is a uniform practice around which a technology develops.146 For example, a standard could describe a specific design of a charging port. Once the standard is set, multiple devices, from cell phones to speakers, can be designed to work with that standard charging port. Standards enable uniformity and operability across manufacturers, devices, or platforms.147 We interact with and depend on countless technology standards such as USB, Bluetooth, HTML, and 3G in our everyday life. Their importance cannot be overstated: they provide the foundation for the development and implementation of technology.148

Despite their benefits, standards also present a dilemma: they are most beneficial when there is widespread adoption.149 But most entities, from companies to countries, want to have their own individual designs become standard so as to gain a competitive advantage.150 Thus, there must be some process that encourages collaboration and consensus even among competitors.151

Such collaboration is facilitated by a standards development organization (SDO) or standard setting organization (SSO), which creates, revises, and coordinates technical standards.152 Standards development organizations have rules and criteria to prevent a single interest from dominating the definition of a standard.153 Their rules govern how they approach patented technologies.154 For example, an SDO may require that only unpatented technologies can be adopted as standard. Thus, in deciding what charging port will be the industry standard, the SDO would reject any charging ports that were patented. While this is, in a sense, a procompetitive solution—no entity would have a monopoly over the standard technology that was decided upon—it is largely unrealistic in today’s world where most useful and current inventions are patented. Adopting an unpatented technology that is outdated as standard defeats the purpose of a standard, which is to facilitate the development and adoption of innovative technology.155

As a result, SDOs must contend with standard-essential patents (SEPs), patents that are necessary for the implementation of a standardized technology.156 SDOs typically require that if a proposed standard is encumbered by patents, those patents must be licensed on “fair, reasonable, and non-discriminatory” (FRAND) terms to those seeking to utilize the technology.157 This requirement is thought to facilitate the adoption of the standard in the industry while providing fair terms to all parties involved.158 Because standards are critical to almost everything that touches technology, standard-essential patents are as well. When a patent is essential to a standard, there is no way to comply with the standard without infringing or licensing the patent.159 A dispute over a single SEP can prevent a company from making its product compatible with the internet, computers, or mobile devices.160 For example, a typical cellphone charging port has SEPs that cover every part of its design, from the electronic circuitry to communication protocols. Methods that enable a mobile phone to stay connected to a 4G/LTE network are covered by a multitude of SEPs that are essential to the 4G/LTE standard.161 Qualcomm owns SEPs essential to widely adopted cellular communication standards such as CDMA and LTE.162

A competition problem arises when, despite any agreement made at the time a standard was chosen, SEPs are later not licensed at fair, reasonable, and non-discriminatory terms. When the owner of a SEP bars a competitor from utilizing a SEP and therefore a standard technology, this decision deals a huge blow to the competitor. The FTC believes that when a SEP-owner violates an agreement to license the SEP on fair, reasonable, and non-discriminatory terms, this is an anticompetitive action in violation of antitrust laws.163 In FTC v. Qualcomm,164 the FTC pursued action against Qualcomm under Section 5 of the FTC Act for refusing to license its SEPs to competitors.165

In contrast, the DOJ has taken the stance that SEP owners refusing to license on FRAND terms is not an anticompetitive antitrust violation.166 It is simply a patent owner exercising his or her earned right to exclude competitors. As dictated under patent law doctrine, a patent owner has the right to prevent anyone from utilizing his or her patented technology.167 Going forward, it is uncertain whether the government will pursue antitrust enforcement actions related to the licensing of SEPs.168

This disagreement between the DOJ and the FTC rippled out to cause concern in the legislative branch. Because of the DOJ’s disagreement with the FTC, Senators wrote to the DOJ urging the agency to clarify its policy and provide guidance to stakeholders.169 The uncertainty created by this bifurcated approach creates dissatisfaction in Congress and so undermines support for these agencies among those who control their funding.170

The disagreement between the DOJ and FTC has international implications as well. Divergence in treatment of FRAND agreements among countries already causes difficulties for companies operating under different national standards in the global economy.171 These international challenges are further exacerbated by the different policies of the two domestic antitrust enforcement agencies of the United States, still the most important commercial nation in the world.172 Companies are subject to potentially conflicting standards depending not only on the national identity of the enforcement agency but also on the identity of the agency with the United States. International harmonization becomes more difficult if the United States has internal disagreements. Therefore, the case of SEPs shows how dual enforcement has created uncertainty in the industry, in Congress, and internationally.

B. Dual Enforcement Causes Inefficiencies and Inconsistent Outcomes

Technology did not create, but only exacerbates long-standing problems of dual antitrust enforcement. In this subpart we briefly offer more general arguments against joint enforcement by the FTC and Antitrust Division. It wastes resources, and even in non-technological areas, it creates uncertainty. 173 Both waste and uncertainty are compounded by turf wars, as exemplified by conflicts over mergers. 174

Moreover, Congress never intended for a system of full dual enforcement. 175 Thus, eliminating it would not undermine a fully deliberated scheme. Single enforcement would additionally bring the United States in conformity with industrialized nations worldwide, which generally have a single antitrust enforcer. 176 Finally, we respond to the argument that single agency enforcement would not improve matters much because private actors can enforce antitrust. 177 Private enforcers are subject to heavy restrictions and do not have the same ability to direct antitrust policy as the agencies do.

#### **Unified antitrust enforcement of SEP monopolies is make or break for growth**

McGinnis and Sun, 21 – John O. McGinnis, Professor at Northwestern University and Linda Sun, Associate at Wilmer Pickering Hale & Dorr LLP and J.D. 2020 at Northwestern Pritzker School of Law, Winter, “Unifying Antitrust Enforcement for the Digital Age,” *78 Wash. & Lee L. Rev. 305*, p. Nexis – Iowa

1. The Need for Certainty in Antitrust Regulation of Technology

A unified approach to antitrust regulation is especially important when it comes to the technology industry for three reasons. First, the rapidly growing technology industry is at the center of the U.S. economy: in 2018, the internet sector accounted for $2.1 trillion of the economy and 10 percent of the GDP. 48 Uncertainty about antitrust rules created by dual enforcement hinders economic growth.

Second, technological industries are especially sensitive to shifts in antitrust policy because antitrust actions can change the trajectory of fast-changing industries. For instance, the DOJ's antitrust enforcement action against the Bell System broke up the monopoly in telephony. 49 One court later summarized the effect as "an unprecedented flowering of innovation" in the telecom industry. 50 Agency antitrust action also played a large role in the growth of software, browser, and [\*318] web company competition. 51 In anticipation of a Justice Department antitrust suit, 52 IBM unbundled its software and hardware products in the 1960s, 53 dramatically changing the software market. Nearly overnight, software went from a typically free good to a commercial product. 54 Governmental antitrust enforcement is additionally credited for Microsoft's 1997 investment in its rival company Apple, which saved the then-nascent company from the brink of bankruptcy. 55 Microsoft likely acted in self-preservation because it faced antitrust scrutiny that came to a head in a DOJ suit the year after. 56 The [\*319] Microsoft settlement itself is "credited with giving web companies like Google--and browsers like Google Chrome . . . space to grow." 57 These actions changed the technological landscape, and future antitrust decisions regarding technology companies will have just as significant of an impact, if not more.

Moreover, antitrust policy is very important to the research and development that is the heart of innovation in tech, particularly as more research and development has moved from the public sector to the private sector. 58 Private companies are affected more directly by antitrust policies. 59 Even the financing of technology is dependent on antitrust law. Today, as discussed in more detail below, 60 the primary reason a tech start-up receives funding from investors is its acquisition potential; merger and acquisition policies play a significant role. 61 Once again, certainty here is important for investors, and [\*320] possible and actual conflicts between DOJ and the FTC reduce certainty.

Third, a unified approach to antitrust has become more important because the antitrust issues affecting tech are particularly complex; it is difficult to determine how best to apply antitrust law to emerging technologies. 62This challenge makes it more likely that DOJ and the FTC will proceed on different theories, increasing uncertainty. For instance, antitrust scholars and regulators have struggled to apply the traditional small but significant non-transitory increase in prices (SSNIP) test to zero-price tech markets. 63 The SSNIP test, used by both the FTC and DOJ, defines a relevant antitrust market as the "smallest grouping of products for which a hypothetical monopolist could profitably impose a 5% price increase." 64 However, many technology platforms offer their products at no monetary cost to customers. The lack of measurable price renders the SSNIP test difficult to operationalize. 65 This complexity makes it more likely that the DOJ and the FTC will apply the test differently, resulting in uneven and unfair outcomes. SSNIP is only one of many areas of debate regarding how antitrust is to be applied to technology.

#### Growth prevents extinction and the collapse of the rules-based order

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Broadly shared economic prosperity is a bedrock of America’s economic and political strength—both domestically and in the international arena. A strong and equitable recovery from the economic crisis created by COVID-19 would be a powerful testament to the resilience of the American system and its ability to create prosperity at a time of seismic change and persistent global crisis. Such a recovery could attack the profound economic inequities that have developed over the past several decades. Without bold action to help all workers access good jobs as the economy returns, the United States risks undermining the legitimacy of its institutions and its international standing. The outcome will be a key determinant of America’s national security for years to come.

An equitable recovery requires a national commitment to help all workers obtain good jobs—particularly the two-thirds of adults without a bachelor’s degree and people of color who have been most affected by the crisis and were denied opportunity before it. As the nation engages in a historic debate about how to accelerate economic recovery, ambitious public investment is necessary to put Americans back to work with dignity and opportunity. We need an intentional effort to make sure that the jobs that come back are good jobs with decent wages, benefits, and mobility and to empower workers to access these opportunities in a profoundly changed labor market.

To achieve these goals, American policy makers need to establish job growth strategies that address urgent public needs through major programs in green energy, infrastructure, and health. Alongside these job growth strategies, we need to recognize and develop the talents of workers by creating an adult learning system that meets workers’ needs and develops skills for the digital economy. The national security community must lend its support to this cause. And as it does so, it can bring home the lessons from the advances made in these areas in other countries, particularly our European allies, and consider this a realm of international cooperation and international engagement.

Shared Economic Prosperity Is a National Security Asset

A strong economy is essential to America’s security and diplomatic strategy. Economic strength increases our influence on the global stage, expands markets, and funds a strong and agile military and national defense. Yet it is not enough for America’s economy to be strong for some—prosperity must be broadly shared. Widespread belief in the ability of the American economic system to create economic security and mobility for all—the American Dream— creates credibility and legitimacy for America’s values, governance, and alliances around the world.

After World War II, the United States grew the middle class to historic size and strength. This achievement made America the model of the free world—setting the stage for decades of American political and economic leadership. Domestically, broad participation in the economy is core to the legitimacy of our democracy and the strength of our political institutions. A belief that the economic system works for millions is an important part of creating trust in a democratic government’s ability to meet the needs of the people.

The COVID-19 Crisis Puts Millions of American Workers at Risk

For the last several decades, the American Dream has been on the wane. Opportunity has been increasingly concentrated in the hands of a small share of workers able to access the knowledge economy. Too many Americans, particularly those without four-year degrees, experienced stagnant wages, less stability, and fewer opportunities for advancement.

Since COVID-19 hit, millions have lost their jobs or income and are struggling to meet their basic needs—including food, housing, and medical care.1 The crisis has impacted sectors like hospitality, leisure, and retail, which employ a large share of America’s most economically vulnerable workers, resulting in alarming disparities in unemployment rates along education and racial lines. In August, the unemployment rate for those with a high school degree or less was more than double the rate for those with a bachelor’s degree.2 Black and Hispanic Americans are experiencing disproportionately high unemployment, with the gulf widening as the crisis continues.3

The experience of the Great Recession shows that without intentional effort to drive an inclusive recovery, inequality may get worse: while workers with a high school education or less experienced the majority of job losses, nearly all new jobs went to workers with postsecondary education. Inequalities across racial lines also increased as workers of color worked in the hardest-hit sectors and were slower to recover earnings and income than White workers.4

The Case for an Inclusive Recovery

A recovery that promotes broad economic participation, renewed opportunity, and equity will strengthen American moral and political authority around the world. It will send a strong message about the strength and resilience of democratic government and the American people’s ability to adapt to a changing global economic landscape. An inclusive recovery will reaffirm American leadership as core to the success of our most critical international alliances, which are rooted in the notion of shared destiny and interdependence. For example, NATO, which has been a cornerstone of U.S. foreign policy and a force of global stability for decades, has suffered from American disengagement in recent years. A strong American recovery—coupled with a renewed openness to international collaboration—is core to NATO’s ability to solve shared geopolitical and security challenges. A renewed partnership with our European allies from a position of economic strength will enable us to address global crises such as climate change, global pandemics, and refugees. Together, the United States and Europe can pursue a commitment to investing in workers for shared economic competitiveness, innovation, and long-term prosperity.

The U.S. has unique advantages that give it the tools to emerge from the crisis with tremendous economic strength— including an entrepreneurial spirit and the technological and scientific infrastructure to lead global efforts in developing industries like green energy and biosciences that will shape the international economy for decades to come.

#### **Rules-based order caps escalation and is try or die for a range of existential risks**

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This international system, while not perfect, has proven to be more successful than any in human history at providing security, economic prosperity, and freedom. The evidence of this is apparent in the numbers. Before 1945, major powers frequently engaged in direct warfare on a massive scale, as in the Napoleonic Wars, World War I, and World War II. Since 1945, however, there have been zero great-power wars. As shown in Figure 1, the percentage of people killed in armed conflict has drastically declined in the post-World War II era. Armed conflict killed an average of 1–2 percent of the human population from 1600 to 1945. During the Cold War, an average of 0.4 percent of the world’s population perished due to war. Since the year 2000, less than one one-hundredth of 1 percent of people have died this way.8 Under a rules-based system, the world has continued to make progress in reducing deaths from all kinds of war, including often-intractable civil conflicts.9 Turning to economic prosperity, the global gross domestic product (GDP) per capita in 1945 was $4,079.10 Today it is $11,570.11 This drastic increase in global living standards is evident in Figure 2. The share of the global population living in poverty has dramatically decreased. In 1929, the number of people living in extreme poverty (defined as earning less than 1.90 international dollars per day) was 1.35 billion, almost two-thirds of the world population at the time. In 2015, that figure was 733.48 million, or slightly less than 10 percent of the world population.12 China itself has been one of the biggest beneficiaries of this system, as geopolitical stability in Asia and integration into the global economy helped to lift four hundred million Chinese out of poverty. In the realm of good governance, the number of democracies has substantially increased. With the end of World War II and decolonization, the number of democracies increased from seventeen to forty-eight between 1945 and 1989.13 That number further skyrocketed at the end of the Cold War, as countries formerly behind the Iron Curtain rushed to join the West. In the year 1900, there were twelve democracies in the world. Today there are ninety-six.14 The percentage of the world’s population living under democratic governments has also increased from about 12 percent in 1900 to more than 55 percent today.15 This trend is visible in Figure 3. To be sure, these outcomes are the result of an enormous and interconnected range of factors. International-relations scholars, for example, believe that nuclear deterrence and the absence of a multipolar distribution of power also contributed to great-power peace.16 In addition, globalization and economic development have been fueled by new technological developments. Further, global norms on democratic governance and human rights have come a long way since the early twentieth century.17 Still, it is doubtful whether this dramatic improvement in the human condition could have been achieved in the absence of the rules-based international system. Moreover, many of these other driving forces are themselves constitutive of, if not partially the result of, that system. Global bipolarity, and then unipolarity with the United States at its center, was critical for the postwar development of a rules-based system, which may not have been possible in a more multipolar distribution of international power, or with a non-democratic hegemon at the system’s apex. The splitting of the atom could have resulted in widespread nuclear-weapons proliferation and nuclear use had it not been for the NPT and extended US nuclear deterrence in Europe and Asia.18 The most important technological advances for globalization, including the Internet, occurred and flourished in the free world, defended by the United States and its democratic allies and partners.19 Finally, the United States and its democratic partners, along with nongovernmental organizations and individuals operating in these states, were the most important norm entrepreneurs propagating global norms around issues of good governance, democracy, and human rights. In sum, the rules-based international system that has been the defining feature of global order for the past seventy years has coincided with—and was almost certainly essential in bringing about—the most secure, prosperous, and well-governed world humanity has ever known. Despite this record of unprecedented and enduring success, the rules-based international system is currently besieged by a number of challenges unleashed by rapid and dramatic global change. Understanding the current strategic context, including global trends and threats both external and internal to the system’s democratic core, is a necessary first step toward devising a strategy to revitalize, adapt, and defend a rules-based international system. Global Trends The system is currently buffeted by several worldwide trends, including global shifts in the balance of power, the emergence of disruptive technology, the threat of nuclear proliferation, the rise of nonstate actors, and the consequences of climate change. Global Diffusion of Power. The international distribution of power, as defined by relative economic weight, is shifting away from the founders of the post-World War II system to other emerging economies. As recently as the 1990s, nearly 70 percent of global economic activity occurred in Europe and the Americas. By the 2040s, that number is expected to drop to roughly 40 percent. At the same time, the Asian share of global GDP will increase from 32 percent at present to 53 percent in 2050, meaning that, by that time, the majority of all economic activity on Earth will occur in Asia.20 While the United States remains the world’s most powerful state militarily and economically, it is declining relative to other rising powers, particularly China. When corrected for purchasing-power parity (PPP), China’s GDP has already surpassed the United States. The better metric for international power and influence, however, is real GDP; here, too, the US advantage is narrowing, but more slowly.21 At the conclusion of World War II, the United States possessed roughly 50 percent of global GDP.22 From the 1970s through today, that number has held steady at roughly 25 percent.23 Despite a common misperception, the United States’ share of global power is not declining in absolute terms. Rather, other powers—especially China—are rising. China’s share of global GDP rose from 4.6 percent in the 1990s to 15 percent today.24 Many economists predict that China could surpass the United States as the world’s largest economy by 2030. It is noteworthy, however, that in 2009, economists predicted that this transition would happen by 2020. That date has been pushed back a decade as Chinese growth has slowed. Future projections depend entirely on assumptions about growth rates in the United States and China that cannot be known with certainty. Still, most economists expect that China will, at some point, surpass the United States as the world’s largest economy. China is joined by other emerging economies with rapid growth rates, including India, Indonesia, and others. US allies, including Japan, Germany, and the United Kingdom, remain among the wealthiest nations on Earth, but their share of global power is also declining relative to the rise of the rest. This shift is significant because international orders function best when their formal attributes at least roughly reflect the underlying balance of power. While only one measure of global influence, economic power is central given the leverage it provides over trade and investment, and the resources it offers to sustain military and security advantages. It is also important to point out, however, that the United States and its formal treaty allies continue to possess a preponderance of power in the international system. As Figure 4 shows, the United States and its formal allies currently produce 59 percent of global GDP. When including other countries considered to be “democracies” by the widely used Polity scores, that number rises to 75 percent of global GDP. Democracies continue to retain global influence because more countries have transitioned to democracy since the end of the Cold War, and overall economic growth in democratic countries has outpaced that in autocratic states since 1991. The major shift since the dawn of the post-Cold War world, therefore, is not that the power of the United States and its democratic allies and partners has declined substantially. The major difference is that the share possessed by autocratic challengers, especially China, has grown. As Figure 4 shows, the world is approaching a more bipolar distribution of power, with more wealth concentrated in the democracies and in a grouping of autocratic challengers led by China. This means that, if they are able to work together more cohesively, the United States and its democratic allies and partners still have the power and influence necessary to significantly shape international outcomes. Moreover, if they are able to expand their ranks to court other nonaligned democracies like India, Indonesia, and Mexico, their influence on the international system can be even more decisive. Disruptive Technologies. New technologies—including artificial intelligence (AI), robotics, quantum computing, and biotech, among others—are being developed at an exponential pace, and have the promise to transform society. They will determine how people live and function in the twenty-first century, significantly shaping the global economy, international security, and the course of geopolitics. Throughout history, progress has been built on technological innovation, ranging from Thomas Edison’s light bulb to Henry Ford’s assembly line to the silicon chip, the personal computer, and the Internet. While new technology promises improved productivity and quality of life, it will bring serious downside risks, including economic dislocation and weapons proliferation. AI, for example, is already being widely adopted in the private sector to achieve great efficiencies and cost savings.25 At the same time, automation threatens to put millions out of work as jobs once performed by humans are replaced by machines. Moreover, AI is also being introduced into national militaries. A logical next step is fully autonomous weapons that can select and engage targets without a human in the decision-making loop. Some warn that these “killer robots” introduce many ethical and security risks, including the fear that they may turn on their creators and threaten humans’ very existence or, indeed, what it means to be human.26 Henry Kissinger warns, “We are in danger of losing the capacity that has been the essence of human cognition.”27 The existing international system was designed to deal with the most important dual-use technologies of the twentieth century, such as nuclear power, but it must be updated to deal with the technologies of the twenty-first century. As with nuclear energy, the international community needs an entirely new set of international norms, standards, and agreements for responsible uses of new technologies that mitigate their downside risks, while maximizing their upside potential. Since the time of Edison, the United States has been the world’s most innovative country, but it is at risk of losing that title to China and other countries that aim for the first-mover advantage in the next round of technological breakthroughs. Throughout history, technological progress and international leadership have gone hand in hand. Think of roads and aqueducts in ancient Rome, the steam engine in nineteenth-century Great Britain, and the Internet in the United States. If China or another country takes the lead in the new tech arms race, Beijing may be in a better position to rewrite the international system’s rules. Nuclear Proliferation. Even as the world grapples with the technological challenges of the twenty-first century, century-old technological challenges remain. The NPT may be the most successful treaty in history, but its future is uncertain. North Korea has become the only country in history to sign the treaty, withdraw, and build nuclear weapons. If North Korea is allowed to become an accepted nuclear-weapons state, it would pose a severe threat to international peace and security. Other members of the treaty may also reconsider their nuclear options. In particular, South Korea and Japan may be at risk of pursuing nuclear-weapons programs if the program in Pyongyang continues to advance and the United States is unwilling or unable to provide Seoul and Tokyo with adequate security assurances. Iran’s nuclear program was allowed to operate within strict limits according to the terms of the Joint Comprehensive Plan of Action (JCPOA), but the US withdrawal from that agreement may lead Tehran to accelerate its nuclear program or dash to achieve a nuclear weapon. A bomb in Iran could also instigate further regional nuclear proliferation.28 Officials in Saudi Arabia, for example, have declared that if Iran acquires nuclear weapons, Riyadh will follow suit. A proliferation cascade in East Asia or the Middle East would undermine the global nonproliferation regime and fuel regional insecurity. Moreover, new technologies such as additive manufacturing may make it easier for future proliferators to build nuclear-weapons programs, and harder for the international community to catch and stop them.29 The additional spread of a weapon that remains the ultimate instrument of military force could threaten the global security and stability necessary for the smooth functioning of the rules-based international system. Ecological Disaster. As with nuclear war, an ecological disaster could constitute a direct threat to humanity’s very existence. While states have made efforts to address climate change caused by carbon emissions, including in the Paris Climate Agreement, these steps will not be sufficient to keep emissions below the target levels set by leading scientific panels. Higher average global temperatures are leading to rising sea levels, drought, an increased frequency of violent storms, and forced migrations, all of which are threatening vulnerable societies, undermining already-weak national governments, and contributing to conflicts over natural resources.

#### It’s reverse-causal – alternative systems that abandon progressive IR and the western order culminate in climate catastrophe and fascism

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Examples of this way of thinking are plentiful but, for convenience, one need to look no further than Jairus Grove’s scintillatingly pessimistic keynote at the Hamburg Sessions (forthcoming as an essay in NP and based on his 2019 book, Savage Ecology).3 It is not that Grove doesn’t make compelling critical arguments – he does and in brilliant, imaginative ways – but that they lack balance. And balance matters, whether we are reckoning with horrendous pasts or trying to boldly imaging new futures.

To see, or certainly to dwell on, only the bad in what we in the West have collectively done (however, Grove or anyone else defines who we are), over the entire course of our past and present is grossly unfair. It also amounts, in effect, to a counsel of despair, however much Grove protests to the contrary or claims to eschew nihilism. In his keynote, having written off our past and present, Grove also explicitly urged us in Europe and the West to stop imagining better, progressive futures, arguing that this has led to precisely the problems he identified. Grove’s critique thus not only leaves us out of time (without an avowable past, present or future) but also leaves us without space for contesting negative, regressive and repressive political trends. In his book, he laments the ‘debilitating stupor’ in which the work of thinkers like Theodor Adorno and Giorgio Agamben leaves us (Grove, 2019: 238). But Grove’s own pessimism, if we took it seriously, would leave Europeans without a political leg to stand on. It would leave us in just such a stupor – or worse – with no solid ground and no lever: no way to move the world and no platform for positive, progressive change.

Why bother, if everything we do only makes things worse?

However much harm we Europeans and Westerners have done, we haven’t done, don’t and won’t only do harm. The real danger of Grove’s type of timelessly pessimistic and literally hopeless critique is that (again, if taken seriously) it breeds only damaging inertia, inaction and resentment – its hopelessness makes it a debilitating critique; its timelessness offers no possibility of salvage, let alone progress. It cedes the ground of action to those who many of us (including Grove) would explicitly disagree with – whether to exponents of ‘traditional’ approaches to IR who are more than happy to offer policy advice or, worse, to authoritarians and populists in practical politics (as ably described in Johanna Sumuvuori’s essay in this issue). Critical scholars too rarely see it as their task to construct positive visions of better worlds. Instead, too often they content themselves (if no one else) with evermore thoroughgoing deconstructive critique – including of other critical academics. Whether totalising or parasitic, even some of its leading proponents admit that IR’s critical project has, thus far, had insufficient impact on the world at large (Austin, 2017, 2019).

Few critical scholars will thank me for this comparison, but, in their pessimistic, misanthropic zeal, they echo what French President Emmanuel Macron called the ‘sad passions’ of the author Michel Houellebecq4 (Carre`re, 2017). They may not share Houellebecq’s politics, but many critical scholars certainly share his exhaustive (and exhausting) disenchantment with contemporary (neo)liberal societies, the state of Europe and of the West. Too often they also share his miserabilist outlook on the impossibility of change for the better and the futility or harm of even trying to improve things.

Grove does propose several forms of political action: micro-kindnesses, however vague (e.g. ‘the impossible generosity and affirmation of deconstruction’, 2019: 231); resistant acts by brave individuals (e.g. ‘William ‘‘Fox’’ Fallon, who sacrificed his prestigious position as head of [US Military] Central Command because he would not go along with the plan to attack Iran’, 2019: 232); embracing entirely new ‘forms of life 5 ’; or welcoming apocalypse as driver of change (2019: 229–248). Grove will not be confused with Goldilocks anytime soon – these forms of action each seem either too little or (much) too much.

Few of us would question the value of and need for kindness and, indeed, the most hopeful part of Grove’s book is the touching introduction where he details many of the kindnesses he has himself benefitted from, mainly from people in the West where he has spent most of his life. There is also, clearly, a role for resistance and for the kinds of acts that Grove notes have prevented executions and even nuclear war. Yet without a wider programme, without a bigger positive vision, kindness and resistance cannot sufficiently change our world for the better. Apocalypse, on the contrary, changes too much, junks too much that is good and is rarely likely to be an appealing option, or something we can all get behind. The apocalyptic aspect of Grove’s position, like that of many critical scholars, seeks to inflict destructive harm on Western institutions rather than constructively reform them – something Houellebecq would also relish. Apocalyptic change also smacks of the recklessly callous, negative sides of early 20th-century futurism (Marinetti, 1909), as Grove acknowledges when asking ‘How do we go wild without the cruelty of indifference?’ (2019: 280). Again, a more balanced approach to boldness would help.

To be clear, major change is needed – that was the whole point of the Hamburg Sessions and the motivation behind giving it the theme of ‘Un-Cancelling the Future’. I’ve argued elsewhere that the kind of socio-economically regressive, technocratic, defensive liberalisms that have dominated large parts of the last 40 years in the West have a lot to answer for (Tallis, 2018). So too, of course, does the type of narrowly, teleological individually atomising (neo)liberalism that neither saw (Fukuyama, 1992) nor allowed (Fisher, 2009) alternative visions of politics, societies and economies. Mark Fisher (2009), echoing the artist Gerhard Richter (Elger, 2009), called this myopic liberalism ‘Capitalist Realism’. You don’t have to be a Marxist or even a leftist to see that a mandated lack of alternatives and a commensurate narrowing of possibilities and horizons is a bad thing. As noted above, both climate change and sociotechnical upheavals in the ways we work and live need bold visions to address the challenges they pose while also seizing the opportunities they present.

It is, however, eminently possible to recognise the full horrors of Europe’s (colonial) pasts and presents without immediately discounting the possibility of improvement coming from the West, from Europe. Similarly, one can recognise the myriad problems that Europeans have caused while also celebrating the many positive things they have also achieved. Moreover, it is possible to use those achievements as inspirations for better ways of doing things – as catalysts to new, progressive creativity and to positive visions of the future. Just as Kraftwerk did in the fragile yet fertile Germany of the second half of the 20th century when they acknowledged the abyss yet still sought a better future, including as atonement for that past.

#### Resolving dual enforcement solves patent holdup, international signaling, and durable global interoperability

Alanko, 20 – Anita, Patent examiner at the United States Patent and Trademark Office and J.D. from The Catholic University of America, Columbus School of Law. “The New Madison Approach to Antitrust Law and Intellectual Property Law,” *28 Cath. U. J. L. & Tech. 219*, Spring, p. Nexis – Iowa

The DOJ-FTC have already issued joint "Antitrust Guidelines for the Licensing of Intellectual Property" in 2017 to guide the public about when anticompetitive conduct can be found in the licensing of intellectual property. 265 The guidelines state that intellectual property is considered the same as any other form of property for the antitrust analysis. 266 While patents can confer market power, market power does not violate antitrust law if that power derives from "a superior product, business acumen, or historic accident." 267 The guidelines describe the markets affected by licensing, and general principles and their application in evaluating license agreements using the rule of reason. 268 With respect to the fourth element of the New Madison Approach, the guidelines state, "Nor does such market power impose on the intellectual property owner an obligation to license the use of that property to others." 269 However, as discussed above, this is not a necessary result and exceptions may be possible. 270 Furthermore, the guidelines do not directly address standard-essential patents within the context of standard-setting organizations. As technology progresses and SSOs become more prevalent, clear policy is needed.

In response to the debate and withdrawal from the 2013 Joint Policy Statement, the USPTO, the National Institute of Standards and Technology [\*251] ("NIST"), and the DOJ Antitrust Division issued a new 2019 Policy Statement. 271 Good-faith negotiations between patent owners and licensees are expected, but injunctions should be available for patent infringement as the facts warrant, with no special rules for standard essential patents. 272 The 2019 Policy Statement reiterates that a balanced approach, accounting for all remedies, will preserve competition and provide incentives to innovate. 273A USPTO press release quotes Under Secretary of Commerce for Intellectual Property and Director of the USPTO Andrei Iancu stating, "The new joint statement effectively takes the government's thumb off the scale" and is meant to "incentivize technological development and growth of standards-based industries." 274

This is a fair debate, but the enforcement agencies are in a unique position to drive the discussion towards the best solution. A faithful effort now to gather public input will help ensure that any guidelines and policy statements are likely to be accepted. 275 That way, policy and guidelines can remain valuable and withstand the test of time. 276

By coming together with the DOJ, stakeholders can send a strong statement to the world that the patent system is strong and open to all inventors in the world. The role of antitrust law in the patent system must be clear. It is not one to be shuttered away but approached on a case-by-case basis, as the facts and circumstances demand.

America's inventors and those who invest in patented technology in America deserve clarity, a strong intellectual property system, and a strong antitrust system. Antitrust enforcers, innovators, and implementers can and must all work together to better our society.

IV. CONCLUSION

Intellectual property law and antitrust law can work together to promote innovation that increases consumer welfare. However, antitrust law should not [\*252] be short-sighted and look for short term rewards. Having a variety of remedies available, including injunctions, ensures that parties will negotiate in good faith and abide by their commitments over time. The New Madison Approach is a necessary debate; further discussion and analysis will ensure that policy and guidelines that stand the test of time can be developed. Innovation is necessary at the cutting edge, creating new products in an unpredictable time frame. This demands flexibility to ensure that the society can reap the greatest benefit possible. Antitrust law should also address patent hold-up and hold-out, injunctions, and unilateral refusal to license with clear policy. Ultimately, society will reap the benefits of an appropriate approach to these bodies of law.

### 1AC – Telecommunications

#### FRAND is unraveling now – stricter antitrust application is key to prevent ex post monopolies and prevent collapse of wireless communications

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Antitrust best achieves its purpose when it takes markets as it finds them, and then protects them from threats to competition. The antitrust tribunal must understand the market before it and the rationales and effects of its various rules. Then it considers whether a challenged restraint might operate anticompetitively so as to cause unnecessary consumer harm. For more than a century, antitrust jurisprudence has approached markets in this way. For example, Justice Brandeis’s opinion in the Board of Trade case3 began by describing the Board’s operation as a market. From that point the Court’s job was to ascertain whether the challenged rule operated anticompetitively to undermine this purpose.4 In the NCAA case nearly seventy years later it did the same thing—acknowledging the valuable market created by this joint venture of colleges to promote amateur intercollegiate athletics. It condemned a restraint on competition that reduced output and harmed consumers and was not central to the NCAA’s purpose.5 The list of cases in which the Supreme Court has followed this template so as to protect the competitive integrity of standard setting or other collaborative market processes is long.6 In a particularly myopic decision involving the FRAND process, the Ninth Circuit made no attempt to understand that process or how the antitrust laws could be used to protect it from anticompetitive restraints.7 That was not entirely the court’s fault. Part of the blame lies with the Antitrust Division of the Justice Department, which intervened in the proceeding and seemed more intent on protecting Qualcomm than the competitive integrity of the FRAND process.8 While the FRAND process has been highly productive, it is also fragile. Firms are tempted to make commitments at the beginning when the incentive to join is large, but renege on them later when they can profit by doing so. At least in this particular case, private FRAND enforcement had not worked very well. Qualcomm had been able to violate FRAND commitments in order to exclude rivals and obtain higher royalties than FRAND would permit, largely with impunity. Other firms will very likely follow Qualcomm’s lead. If that happens the FRAND system will fall apart, doing irreparable injury to the modern wireless telecommunications network or, at the very least, diminishing the leadership role of the United States in preserving effective network competition. While governments can be heavily involved in standard setting,9 the implementation of technical standards in information technologies is largely the work of private actors. Government involvement is limited mainly to enforcement of contract, intellectual property, or antitrust law. As private actors, those involved in standard setting or compliance are fully subject to the federal antitrust laws. This Article addresses one question: when is an SSO participant’s violation of a FRAND commitment an antitrust violation, and if it is, of what kind and what are the implications for remedies? It warns against two extremes. One is thinking that any violation of a FRAND commitment is an antitrust violation as well. In the first instance FRAND obligations are contractual, and most breaches of contract do not violate any antitrust law. The other extreme is thinking that, because a FRAND violation is a breach of contract, it cannot also be an antitrust violation. The question of an antitrust violation does not depend on whether the conduct breached a particular agreement but rather on whether it caused competitive harm. This can happen because the conduct restrained trade under section 1 of the Sherman Act, was unreasonably exclusionary under section 2 of the Sherman Act, or amounted to an anticompetitive condition or understanding as defined by section 3 of the Clayton Act.10 The end goal is to identify practices that harm competition, thereby injuring consumers. The Ninth Circuit’s Qualcomm decision will make antitrust violations in the context of FRAND licensing much more difficult to prove, even in cases where anticompetitive behavior and consumer harm seem clear.11 Indeed, in this case the court itself acknowledged the harm to consumers but appeared to think that they were not entitled to protection.12 If this decision stands, FRAND obligations will to a larger extent have to be settled through private litigation and the federal antitrust enforcement agencies will have a diminished role. Anticompetitive behavior by one firm that is not effectively disciplined will lead others to do the same thing. Not only did the Ninth Circuit reject application of the antitrust laws in this case, it also appeared to repudiate antitrust’s consumer welfare principle, saying: . . . [T]he district court correctly defined the relevant markets as “the market for CDMA modem chips and the market for premium LTE modem chips.” Nevertheless, its analysis of Qualcomm’s business practices and their anticompetitive impact looked beyond these markets to the much larger market of cellular services generally. Thus, a substantial portion of the district court’s ruling considered alleged economic harms to OEMs—who are Qualcomm’s customers, not its competitors—resulting in higher prices to consumers. These harms, even if real, are not “anticompetitive” in the antitrust sense— at least not directly—because they do not involve restraints on trade or exclusionary conduct in “the area of effective competition.”13 The quotation is from the Supreme Court’s decision in Ohio v. American Express Co.,14 where the Supreme Court said only that a relevant market is “the area of effective competition.” The Ninth Circuit panel apparently believed that antitrust harm could occur only to producers inside the relevant market, which typically excludes most customers. The Ninth Circuit did not quote the Supreme Court’s decision one year later in Apple v. Pepper,15 that “Ever since Congress overwhelmingly passed and President Benjamin Harrison signed the Sherman Act in 1890, ‘protecting consumers from monopoly prices” has been “the central concern of antitrust.’”16 The very reason we condemn restraints under the antitrust laws is because they result in lower output and higher prices, harming consumers. The Ninth Circuit panel appeared to believe that higher prices for OEMs—that is, the manufacturer customers who purchase chips for inclusion in their devices— is not the kind of injury that concerns the antitrust laws. Rather, it must be harm to competitors. Customers are often, even typically, not producers in the relevant market. Nevertheless, they are clearly antitrust’s protected class. For example, while exclusive dealing in the first instance might deny selling opportunities to a rival producer, we condemn it because it threatens price increases to their buyers and those who purchase from them. Indeed, the reason we have market power requirements in antitrust cases in the first place is to distinguish harms to rivals that are likely to result in market price increases from those that are not. Competitor exclusion in a competitive market is not an antitrust violation because, while it injures the competitor is does no consumer harm. That is the all-important difference between business torts and antitrust law. Patent holders who participate in SSOs generally agree to provide timely disclosure of their patents or patent applications that are reasonably expected to read on the participants’ technology. 17 They also agree in advance to license their patents thought to be essential to the standard on FRAND terms.18 The Patent Act itself does not impose this obligation. Patentees who are not involved in SSOs have no obligation other than market pressures to submit their patents to a standard or engage in FRAND licensing.19 In networked technologies, however, these market pressures can be substantial. For example, if a patentee refuses to commit its patented technology to an industry standard, the SSO is likely to adopt a different standard that is not believed to infringe those patents.20 Or if a patentee refuses to commit to license a patent to all comers on a nondiscriminatory basis, then the SSO may respond by seeking an alternative standard.21 These actions are driven by the SSO’s goal of competitive creation of a technology when interoperability among diverse producers is a necessary component. Just as any producer, firms involved in the implementation of networked technology seek to minimize their costs by avoiding unnecessary or unnecessarily costly patents. Such avoidance is a socially valuable form of cost minimization. The FRAND obligation generally requires patentees to license freely to all qualified participants, whether or not they are competitors of the patent holder.22 Further, they must settle royalty disputes in a reasonable manner—if necessary, through a third party, such as a court or arbitrator.23 If reference to an arbitrator is contractually specified, such agreements may also be subject to compulsory arbitration under the Federal Arbitration Act.24 The FRAND system facilitates competition by assuring new firms as well as existing ones that they will be able to operate on the networked technology. Royalties to the owners of these patents are generally measured by the value that the contributed patent makes to the standard.25 Importantly, tribunals seek to measure these values “ex ante,” or prior to the patent’s adoption into a standard and at a time when there is a fuller range of competitive alternatives.26 Once the standard is adopted and implementers have incorporated it into their own technologies, a standard essential patent is likely to be in a much stronger position, approaching monopoly in some cases.27 Patents that are committed in this way are described as “standard essential patents” (SEPs), or as being “FRAND encumbered.”28 Qualcomm was able to evade this “ex ante” requirement by insisting on purchaser acceptance of a license on its own terms before it would sell chips.29 Having a patent declared standard essential can increase its value considerably, mainly because the promise of a license at a reasonable rate steers developmental decision making in favor of that particular technology. When a firm makes a commitment to develop its products under a particular standard, it wants assurance that it will have a durable right to operate under that standard at reasonable royalty rates. This process naturally leads to the creation of considerable path dependence in standards. It encourages firms to develop their own technology in ways that ensure interoperability but that can be costly to reverse after the fact.30 This phenomenon of increased value for SEPs also motivates patent owning firms to “over-claim”—that is, to assert that patents are standard essential when subsequent litigation or evaluation determines that they are not. While FRAND agreements require participants to declare relevant patents thought to be essential, the rate of actual declaration far exceeds any rational boundary. As many as one-third to more than half of declared SEPs are very likely not essential to the standard for which they were declared,31 and allegations about the practice of over-declaring are currently being litigated as potential antitrust violations.32 In fact, overall infringement rates for SEP patents are not materially different from those for non-SEP patents.33 A declaration of non-infringement means that, although the patent might be valid, it does not in fact read on the defendant’s particular device or process. In effect, the patent is not a part of the defendant’s technology, and thus cannot be essential. The problem is exacerbated by the fact that, for the most part, SSOs have no process up front for reviewing or questioning individual participants’ declarations that a patent they are offering is in fact both valid and standard essential.34 Ex ante, a patent may offer one of many alternative technological paths to a certain goal. However, ex post, after a standard has been adopted and others have developed their technologies in reliance, the range of acceptable alternatives can decrease dramatically. As a result, the patent whose path is adopted becomes much more valuable.35 In that case, a firm’s ability to evade the FRAND obligation by charging selectively higher royalties to some licensees or conditioning licenses on the purchase of other technology can be extremely lucrative for the patentee but costly to implementers of the standard and disruptive of the SSO’s developmental goals.36 In its Qualcomm decision noted above, the Ninth Circuit did not indicate any awareness of these motivations or their potential for harm.37 In general, the goal of FRAND is to make patents available to participants at a price equivalent to what the patent would have been worth in the more competitive market prior to the time it was declared essential. The relevant question is what was the value of the patent’s contribution to the standard at a time when competitive alternatives may have been available, as opposed to a later time when other firms have dedicated themselves to the standard?38 This approach is simply a variant of the proposition that even a monopoly market can be made competitive if we require competing firms to bid for the opportunity to be the monopolist.39 Even though a natural monopoly entity such as a public utility has the market power of any monopolist, someone must still choose who gets to be the monopolist.40 The winner will be the firm that promises the most competitive behavior, provided that it can be held to that commitment. Once the auction is over and the winner has been selected, however, it will have an incentive to renege on its auction promise and charge whatever price its newly acquired monopoly status provides. FRAND creates similar incentives, as the Qualcomm case illustrates. Alternative proposals to the effect that the FRAND patentee and the licensee should split the difference between value to the patentee and value to the implementer41 improperly take an ex post rather than ex ante view of value and asks the royalty tribunal to divide evenly the difference between the seller’s (patentee’s) willingness to accept and the buyer’s (licensee’s) willingness to pay after FRAND status has been established. That may be a useful way of thinking about price in a bilateral monopoly,42 but only after the bilateral monopoly has formed. The competitive solution is to give the seller the price it would have obtained in a competitive market, which is manifestly not an even division of the surplus. Rather, it is a competitive return to the seller.43

#### Lack of FRAND certainty decks 5G, the Internet of Things (IoT), and Autonomous Vehicles

Borgogno and Colangelo 2021, Giuseppe Colangelo University of Basilicata, Department of Mathematics, Computer Science and Economics; Stanford Law School; LUISS Guido Carli, Department of Business and Management Oscar Borgogno Bank of Italy, (4/16/2021 “SEPs licensing across the supply chain: an antitrust perspective” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3766118)//ellie

The seemingly endless issue of the legal treatment of standard essential patents (SEPs) is clearly one of the most complex matters currently at the heart of intellectual property and competition law. At present, the standards are set to reinforce even further their role as building blocks of the modern global economy, playing a key role in ensuring interoperability and technical compatibility across a broad range of industries. Standards can facilitate the creation and integration of markets, foster positive feedback loops, reduce uncertainty in the marketplace, and lower costs and prices for downstream products.1 By ensuring interoperability, they make networks more valuable. As the holder of a patent included within a standard benefits from a significant increase in value of its legal title, if the standard is successfully adopted, firms may be incentivised to act opportunistically to influence the design of a standard and to maximise their resulting ex post benefits. Indeed, whereas at an early stage of standard definition alternative technologies compete for inclusion in the standard, once the selection has been carried out implementers are locked into the standard. Further, in some industries implementers invest into their products before the standard is chosen or before it is known whether a technology will violate an existing patent. This makes in turn switching prohibitively costly or impractical. High switching costs may create market power for the owners of patents that cover the standard. As a result, they can leverage their position demanding a royalty that reflects not only the value of the technology compared to alternatives, but also the value associated with investments made by producer to implement the standard. This issue is commonly known as hold-up problemand refers to the difference between patent holders’ pricing incentives ex ante (i.e. before the standard is set) and their pricing incentives ex post. At the same time, licensees may also engage in strategic practices refusing to agree on patent holders’ offers and exacerbating litigation in order to escape the payment of royalties or depress prices (reverse hold-up or hold-out). Until recently, the debate has centred on the nature of fair, reasonable and nondiscriminatory (FRAND) commitments and the mechanisms to avoid hold-up and reverse hold-up (or hold-out) problems between licensors and licensees. In order to prevent, or at least credibly reduce, the risks of patent hold-up and to increase the willingness of firms to participate in the development of a standard, Standard Setting Organisations (SSOs) typically adopt disclosure and licensing rules. Notably, with regard to the latter, SSOs require SEP holders to accept FRAND commitments. In general, by requiring a licence to be provided on fair and reasonable terms, the goal is to make SEPs available at a price equivalent to what the patents would have been worth on the market prior to being declared essential. Hence, the FRAND commitment aims to avoid or to reduce the extent of monopoly pricing by SEP holders. Similarly, the non-discrimination requirement is intended to prevent SEP holders from extracting monopoly premiums through selective licensing or “migrating their monopoly power from the FRAND-regulated market to unregulated standard-implementing product markets by licensing to only one or a few implementers or licensing to selected implementers on discriminatorily favorable terms.”2 However, it is debatable whether FRAND commitments can effectively prevent SEP holders from imposing excessive royalty obligations upon licensees, largely due to the unclear economic meaning of the FRAND acronym.3 In fact, there are no generally accepted tests to determine whether or not a particular licence satisfies a FRAND commitment. Furthermore, no consensus exists over its legal effects, notably in relation to whether or not FRAND commitments should imply a waiver of general legal remedies (more specifically, injunctions and other extraordinary remedies). Hence, while the implications of FRAND commitments are undoubtedly significant, their meaning is inherently ambiguous from both an economic and a legal perspective. It comes as no surprise that such broad uncertainty has led to a vast wave of litigation proceedings worldwide in recent years. Against this background, the rise of the Internet of Things (IoT) and the development of 5G are set to add an additional layer of complexity to the current practice of SEP licensing. Indeed, as new technologies are facilitating widespread interconnection between all sorts of devices, the smooth implementation of the 5G standard is crucial to the economic potential of the IoT. For instance, many of the impending disruptive technologies, such as AI-driven robots, personalised healthcare, autonomous driving, and augmented reality, would not be possible without the interconnection between physical and virtual objects enabled by the 5G standard. Therefore, in a break from the past, new standard implementers - which do not belong consistently to the ecosystem of mobile communications - will find themselves having to deal with the intellectual property complexities of this industry. For instance, the automotive industry is taking centre stage as the ecosystem in which the issue of FRAND licensing levels is raised to the highest degree. The market viability of new generation vehicles is closely dependent on their embedded connectivity with third parties and application platforms (such as Android and iOS).5 Therefore, as the industry's evolution hinges on advanced mobile telecommunication standards, automakers have been pledging to install connectivity solutions in all their new vehicles in the coming years. Notably, 5G-compliant mobile technologies are expected significantly to enhance the safety and functionality of vehicles, including vehicle-toeverything communication, allowing data to be transmitted from a car to another entity, including nearby vehicles.

#### Smooth 5g implementation allows for autonomous vehicles but maintaining FRAND standards are key

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With 5G, the promise of autonomous vehicles safely and efficiently gliding down roads and highways everywhere can become a reality. Such a promise, however, can only be achieved through the thoughtful setting of technology standards so that every vehicle is on the same page of a very complicated playbook of vehicle-to-vehicle, vehicle-to-network, vehicle-to-infrastructure, and vehicle-to-pedestrian communications, much of which will be covered by thousands and thousands of patents. If, for example, one OEM’s self-driving vehicle could not seamlessly and reliably communicate with another OEM’s self-driving vehicle, the promise of safer and more efficient personal transportation quickly falls apart. The questions of which patents cover the technology necessary to run this complicated communications playbook and how to license them represent a major issue for the automotive industry. Reminiscent of nineteenth-century settlers of Oklahoma, companies are already stockpiling patents on inventions that may be used to comply with 5G-related technical standards, positioning themselves for a modern-day land rush. In exchange for a standard setting body’s adoption of a company’s suite of patents, the company must contractually bind itself to refrain from seeking to enjoin unlicensed implementers, in favor of licensing them on terms deemed Fair, Reasonable and Non-Discriminatory (FRAND). FRAND by its literal terms suggests a desirable even-handedness. In a technology ecosystem that must implement standards to enable the ultimate goal of a network where vehicles communicate with each other as well as with road surfaces, traffic controls and other connected endpoints, FRAND licensing of standard essential patents (SEP) is an unquestionable prerequisite. If the past decade’s smartphone patent wars and the evolution of the mobile telephone market have taught us anything, it is that what is “fair” or “reasonable” to some, may be the antithesis of that to others. Non-discrimination sounds good until it is invoked to charge everyone—from an inexpensive 5G fitness bracelet to a more expensive autonomous drive vehicle—the same percentage of net sales. In the 4G LTE world of today, dominated by smartphones, tablets and handhelds, such a disparity among devices is not the issue it will be when 5G standards will be applicable to a much broader range of connected products. And yet, fights already exist between SEP owners and SEP implementers over a range of issues, including how to determine the essentiality of an alleged SEP, the reasonableness of a “reasonable” royalty, and what it means to be “non-discriminatory.”

#### **IOT-driven autonomous vehicle interoperability powers green mobility, which mitigates existential warming and environmental degradation**

Bahr et al, 8-26-21 – Roy Bahr, SINTEF Digital AS, Oslo, Norway, along with Reiner John (AVL List GmbH, Graz, Austria), Patrick Pype (NXP Semiconductors, Leuven, Belgium), Gerhard Mitic and Kai Kriegel (Siemens AG, Munich, Germany), Vincent Lorentz, Stefan Waldhör, and Steffen Bockrath (Fraunhofer IISB, Erlangen, Germany), Hans Erik Sand (NxTech AS, Fredrikstad, Norway). “Automotive Intelligence Embedded in Electric Connected Autonomous and Shared Vehicles Technology for Sustainable Green Mobility,” *Front. Future Transp.*, 26 August 2021, https://doi.org/10.3389/ffutr.2021.688482

Abstract

The automotive sector digitalization accelerates the technology convergence of perception, computing processing, connectivity, propulsion, and data fusion for electric connected autonomous and shared (ECAS) vehicles. This brings cutting-edge computing paradigms with embedded cognitive capabilities into vehicle domains and data infrastructure to provide holistic intrinsic and extrinsic intelligence for new mobility applications. Digital technologies are a significant enabler in achieving the sustainability goals of the green transformation of the mobility and transportation sectors. Innovation occurs predominantly in ECAS vehicles’ architecture, operations, intelligent functions, and automotive digital infrastructure. The traditional ownership model is moving toward multimodal and shared mobility services. The ECAS vehicle’s technology allows for the development of virtual automotive functions that run on shared hardware platforms with data unlocking value, and for introducing new, shared computing-based automotive features. Facilitating vehicle automation, vehicle electrification, vehicle-to-everything (V2X) communication is accomplished by the convergence of artificial intelligence (AI), cellular/wireless connectivity, edge computing, the Internet of things (IoT), the Internet of intelligent things (IoIT), digital twins (DTs), virtual/augmented reality (VR/AR) and distributed ledger technologies (DLTs). Vehicles become more intelligent, connected, functioning as edge micro servers on wheels, powered by sensors/actuators, hardware (HW), software (SW) and smart virtual functions that are integrated into the digital infrastructure. Electrification, automation, connectivity, digitalization, decarbonization, decentralization, and standardization are the main drivers that unlock intelligent vehicles' potential for sustainable green mobility applications. ECAS vehicles act as autonomous agents using swarm intelligence to communicate and exchange information, either directly or indirectly, with each other and the infrastructure, accessing independent services such as energy, high-definition maps, routes, infrastructure information, traffic lights, tolls, parking (micropayments), and finding emergent/intelligent solutions. The article gives an overview of the advances in AI technologies and applications to realize intelligent functions and optimize vehicle performance, control, and decision-making for future ECAS vehicles to support the acceleration of deployment in various mobility scenarios. ECAS vehicles, systems, sub-systems, and components are subjected to stringent regulatory frameworks, which set rigorous requirements for autonomous vehicles. An in-depth assessment of existing standards, regulations, and laws, including a thorough gap analysis, is required. Global guidelines must be provided on how to fulfill the requirements. ECAS vehicle technology trustworthiness, including AI-based HW/SW and algorithms, is necessary for developing ECAS systems across the entire automotive ecosystem. The safety and transparency of AI-based technology and the explainability of the purpose, use, benefits, and limitations of AI systems are critical for fulfilling trustworthiness requirements. The article presents ECAS vehicles’ evolution toward domain controller, zonal vehicle, and federated vehicle/edge/cloud-centric based on distributed intelligence in the vehicle and infrastructure level architectures and the role of AI techniques and methods to implement the different autonomous driving and optimization functions for sustainable green mobility.

Introduction

Climate change, global warming, ecological and environmental degradation are global existential threats. Consequently, the new European Green Deal (European Commission, 2019a) roadmap entails a growth strategy to transform Europe into a modern, resource-efficient, and competitive economy. The roadmap aims to transform the economy to achieve climate neutrality by 2050. The transformation can be done by “turning climate and environmental challenges into opportunities across all policy areas and making the transition just and inclusive for all” (European Commission, 2019a).

The European Green Deal is an essential part of the EC's strategy to implement the UN’s 2030 Agenda (United Nations, 2015a) and its sustainable development goals (United Nations, 2015b). To implement this strategy, the European Union has adopted a mobility action plan based on the Vision Zero and Safe System approach (European Commission, 2019b) (zero accidents, zero pollution, and zero congestion). The Green Deal defines four critical elements for sustainable mobility and the automotive industry: climate neutrality, zero pollution Europe, sustainable transport, and the transition to a circular economy. The circular economy action plan (European Commission, 2020) has detailed measures to make sure that sustainable products are the norm in the EU. This plan puts a primary focus on “digital technologies” such as electronics, ICT, and energy storage systems (e.g., batteries, supercapacitors, fuel cells, etc.), which can result in an increase in the lifetime, availability and usage of future vehicles based on AI-enabled technologies.

Digital technologies are a significant enabler for attaining the European Green Deal’s sustainability goals in many different sectors, including mobility and transportation. Digital technologies such as edge computing, IoT, AI, cellular/wireless connectivity, DTs, VR/AR and DLTs can accelerate and maximize the impact of policies that deal with climate change and protect the environment by developing new sustainable electronic component and systems technologies for future vehicles. Expanding automotive intelligence at the vehicle and mobility system level allows the Internet of Vehicles (IoV) and Internet of Energy (IoE) (Vermesan et al., 2011) to become the key enabling technologies to realize future autonomous driving scenarios that embed cognition and autonomous functions.

#### **Warming causes extinction**

Bryce, 20 – Emma, citing Nelson, Roman, and Kemp---Cassidy *Nelson* is Co-lead of the biosecurity team at Oxford), Sabin *Roman* earned a PhD in Complex Systems Simulation from the University of Southampton, and both Roman and Luke *Kemp* are research associates at the Cambridge University. "What Could Drive Humans to Extinction?" Real Clear Science, 7-27-2020, <https://www.realclearscience.com/articles/2020/07/27/what_could_drive_humans_to_extinction.html> -- Iowa

Nuclear war

An existential risk is different to what we might think of as a "regular" hazard or threat, explained Luke Kemp, a research associate at the Centre for the Study of Existential Risk at Cambridge University in the United Kingdom. Kemp studies historical civilizational collapse and the risk posed by climate change in the present day. "A risk in the typical terminology is supposed to be composed of a hazard, a vulnerability and an exposure," he told Live Science. "You can think about this in terms of an asteroid strike. So the hazard itself is the asteroid. The vulnerability is our inability to stop it from occurring — the lack of an intervention system. And our exposure is the fact that it actually hits the Earth in some way, shape or form."

Take nuclear war, which history and popular culture have etched onto our minds as one of the biggest potential risks to human survival. Our vulnerability to this threat grows if countries produce highly-enriched uranium, and as political tensions between nations escalate. That vulnerability determines our exposure.

As is the case for all existential risks, there aren't hard estimates available on how much of Earth's population a nuclear firestorm might eliminate. But it's expected that the effects of a large-scale nuclear winter — the period of freezing temperatures and limited food production that would follow a war, caused by a smoky nuclear haze blocking sunlight from reaching the Earth — would be profound. "From most of the modeling I've seen, it would be absolutely horrendous. It could lead to the death of large swathes of humanity. But it seems unlikely that it by itself would lead to extinction." Kemp said.

Pandemics The misuse of biotechnology is another existential risk that keeps researchers up at night. This is technology that harnesses biology to make new products. One in particular concerns Cassidy Nelson: the abuse of biotechnology to engineer deadly, quick-spreading pathogens. "I worry about a whole range of different pandemic scenarios. But I do think the ones that could be man-made are possibly the greatest threat we could have from biology this century," she said. As acting co-lead of the biosecurity team at the Future of Humanity Institute at the University of Oxford in the United Kingdom, Nelson researches biosecurity issues that face humanity, such as new infectious diseases, pandemics and biological weapons. She recognizes that a pathogen that's been specifically engineered to be as contagious and deadly as possible could be far more damaging than a natural pathogen, potentially dispatching large swathes of Earth's population in limited time. "Nature is pretty phenomenal at coming up with pathogens through natural selection. It's terrible when it does. But it doesn't have this kind of direct 'intent,'" Nelson explained. "My concern would be if you had a bad actor who intentionally tried to design a pathogen to have as much negative impact as possible, through how contagious it was, and how deadly it was.” But despite the fear that might create — especially in our currently pandemic-stricken world — she believes that the probability that this would occur is slim. (It's also worth mentioning that all evidence points to the fact that COVID-19 wasn't created in a lab.) While the scientific and technological advances are steadily lowering the threshold for people to be able to do this, "that also means that our capabilities for doing something about it are rising gradually," she said. "That gives me a sense of hope, that if we could actually get on top [of it], that risk balance could go in our favor." Still, the magnitude of the potential threat keeps researchers' attention trained on this risk.

From climate change to AI

A tour of the threats to human survival can hardly exclude climate change, a phenomenon that (is) already driving the decline and extinction of multiple species across the planet. Could it hurl humanity toward the same fate?

The accompaniments to climate change — food insecurity, water scarcity, and extreme weather events — are set to increasingly threaten human survival, at regional scales. But looking to the future, climate change is also what Kemp described as an "existential risk multiplier" at global scales, meaning that it amplifies other threats to humanity's survival. "It does appear to have all these relationships to both conflict as well as political change, which just makes the world a much more dangerous place to be." Imagine: food or water scarcity intensifying international tensions, and triggering nuclear wars with potentially enormous human fatalities.

This way of thinking about extinction highlights the interconnectedness of existential risks. As Kemp hinted before, it's unlikely that a mass extinction event would result from a single calamity like a nuclear war or pandemic. Rather, history shows us that most civilizational collapses are driven by several interwoven factors. And extinction as we typically imagine it — the rapid annihilation of everyone on Earth — is just one way it could play out.

#### Extinction outweighs.

Ord ’20 [Toby Ord, Senior Research Fellow in Philosophy at Oxford University & world-renowned risk-assessment expert who’s advised the World Health Organization, the World Bank, the World Economic Forum, the US National Intelligence Council and the UK Prime Minister’s Office. (3-3-2020, “The Precipice: Existential Risk and the Future of Humanity,” Hachette Book Group & Bloomsbury Publishing, <https://www.google.com/books/edition/The_Precipice/3aSiDwAAQBAJ?hl=en&gbpv=0>, Google Books]

UNDERSTANDING EXISTENTIAL RISK

Humanity’s future is ripe with possibility. We have achieved a rich understanding of the world we inhabit and a level of health and prosperity of which our ancestors could only dream. We have begun to explore the other worlds in the heavens above us, and to create virtual worlds completely beyond our ancestors’ comprehension. We know of almost no limits to what we might ultimately achieve.

Human extinction would foreclose our future. It would destroy our potential. It would eliminate all possibilities but one: a world ~~bereft~~ [lacking] of human flourishing. Extinction would bring about this failed world and lock it in forever—there would be no coming back.

The philosopher Nick Bostrom showed that extinction is not the only way this could happen: there are other catastrophic outcomes in which we lose not just the present, but all our potential for the future.

Consider a world in ruins: an immense catastrophe has triggered a global collapse of civilization, reducing humanity to a pre-agricultural state. During this catastrophe, the Earth’s environment was damaged so severely that it has become impossible for the survivors to ever reestablish civilization. Even if such a catastrophe did not cause our extinction, it would have a similar effect on our future. The vast realm of futures currently open to us would have collapsed to a narrow range of meager options. We would have a failed world with no way back.

Or consider a world in chains: in a future reminiscent of George Orwell’s Nineteen Eighty-Four, the entire world has become locked under the rule of an oppressive totalitarian regime, determined to perpetuate itself. Through powerful, technologically enabled indoctrination, surveillance and enforcement, it has become impossible for even a handful of dissidents to find each other, let alone stage an uprising. With everyone on Earth living under such rule, the regime is stable from threats, internal and external. If such a regime could be maintained indefinitely, then descent into this totalitarian future would also have much in common with extinction: just a narrow range of terrible futures remaining, and no way out.

[FIGURE 2.1 Omitted]

Following Bostrom, I shall call these “existential catastrophes,” defining them as follows: 3

An existential catastrophe is the destruction of humanity’s longterm potential.

An existential risk is a risk that threatens the destruction of humanity’s longterm potential.

These definitions capture the idea that the outcome of an existential catastrophe is both dismal and irrevocable. We will not just fail to fulfill our potential, but this very potential itself will be permanently lost. While I want to keep the official definitions succinct, there are several areas that warrant clarification.

First, I am understanding humanity’s longterm potential in terms of the set of all possible futures that remain open to us. 4 This is an expansive idea of possibility, including everything that humanity could eventually achieve, even if we have yet to invent the means of achieving it. 5 But it follows that while our choices can lock things in, closing off possibilities, they can’t open up new ones. So any reduction in humanity’s potential should be understood as permanent. The challenge of our time is to preserve our vast potential, and to protect it against the risk of future destruction. The ultimate purpose is to allow our descendants to fulfill our potential, realizing one of the best possible futures open to us.

While it may seem abstract at this scale, this is really a familiar idea that we encounter every day. Consider a child with high longterm potential: with futures open to her in which she leads a great life. It is important that her potential is preserved: that her best futures aren’t cut off due to accident, trauma or lack of education. It is important that her potential is protected: that we build in safeguards to make such a loss of potential extremely unlikely. And it is important that she ultimately fulfills her potential: that she ends up taking one of the best paths open to her. So too for humanity.

Existential risks threaten the destruction of humanity’s potential. This includes cases where this destruction is complete (such as extinction) and where it is nearly complete, such as a permanent collapse of civilization in which the possibility for some very minor types of flourishing remain, or where there remains some remote chance of recovery. 6 I leave the thresholds vague, but it should be understood that in any existential catastrophe the greater part of our potential is gone and very little remains.

Second, my focus on humanity in the definitions is not supposed to exclude considerations of the value of the environment, other animals, successors to Homo sapiens, or creatures elsewhere in the cosmos. It is not that I think only humans count. Instead, it is that humans are the only beings we know of that are responsive to moral reasons and moral argument—the beings who can examine the world and decide to do what is best. If we fail, that upward force, that capacity to push toward what is best or what is just, will vanish from the world.

Our potential is a matter of what humanity can achieve through the combined actions of each and every human. The value of our actions will stem in part from what we do to and for humans, but it will depend on the effects of our actions on non-humans too. If we somehow give rise to new kinds of moral agents in the future, the term “humanity” in my definition should be taken to include them.

My focus on humanity prevents threats to a single country or culture from counting as existential risks. There is a similar term that gets used this way—when people say that something is “an existential threat to this country.” Setting aside the fact that these claims are usually hyperbole, they are expressing a similar idea: that something threatens to permanently destroy the longterm potential of a country or culture.

Third, any notion of risk must involve some kind of probability. What kind is involved in existential risk? Understanding the probability in terms of objective long-run frequencies won’t work, as the existential catastrophes we are concerned with can only ever happen once, and will always be unprecedented until the moment it is too late. We can’t say the probability of an existential catastrophe is precisely zero just because it hasn’t happened yet.

Situations like these require an evidential sense of probability, which describes the appropriate degree of belief we should have on the basis of the available information. This is the familiar type of probability used in courtrooms, banks and betting shops. When I speak of the probability of an existential catastrophe, I will mean the credence humanity should have that it will occur, in light of our best evidence.9

There are many utterly terrible outcomes that do not count as existential catastrophes.

One way this could happen is if there were no single precipitous event, but a multitude of smaller failures. This is because I take on the usual sense of catastrophe as a single, decisive event, rather than any combination of events that is bad in sum. If we were to squander our future simply by continually treating each other badly, or by never getting around to doing anything great, this could be just as bad an outcome but wouldn’t have come about via a catastrophe.

Alternatively, there might be a single catastrophe, but one that leaves open some way for humanity to eventually recover. From our own vantage, looking out to the next few generations, this may appear equally bleak. But a thousand years hence it may be considered just one of several dark episodes in the human story. A true existential catastrophe must by its very nature be the decisive moment of human history—the point where we failed.

Even catastrophes large enough to bring about the global collapse of civilization may fall short of being existential catastrophes. While colloquially referred to as “the end of the world,” a global collapse of civilization need not be the end of the human story. It has the required severity, but may not be permanent or irrevocable.

In this book, I shall use the term civilization collapse quite literally, to refer to an outcome where humanity across the globe loses civilization (at least temporarily), being reduced to a pre-agricultural way of life. The term is often used loosely to refer merely to a massive breakdown of order, the loss of modern technology, or an end to our culture. But I am talking about a world without writing, cities, law, or any of the other trappings of civilization.

This would be a very severe disaster and extremely hard to trigger. For all the historical pressures on civilizations, never once has this happened— not even on the scale of a continent.10 The fact that Europe survived losing 25 to 50 percent of its population in the Black Death, while keeping civilization firmly intact, suggests that triggering the collapse of civilization would require more than 50 percent fatality in every region of the world.11

Even if civilization did collapse, it is likely that it could be reestablished. As we have seen, civilization has already been independently established at least seven times by isolated peoples.12 While one might think resource depletion could make this harder, it is more likely that it has become substantially easier. Most disasters short of human extinction would leave our domesticated animals and plants, as well as copious material resources in the ruins of our cities—it is much easier to re-forge iron from old railings than to smelt it from ore. Even expendable resources such as coal would be much easier to access, via abandoned reserves and mines, than they ever were in the eighteenth century. 13 Moreover, evidence that civilization is possible, and the tools and knowledge to help rebuild, would be scattered across the world.

There are, however, two close connections between the collapse of civilization and existential risk. First, a collapse would count as an existential catastrophe if it were unrecoverable. For example, it is conceivable that some form of extreme climate change or engineered plague might make the planet so inhospitable that humanity would be irrevocably reduced to scattered foragers.14 And second, a global collapse of civilization could increase the chance of extinction, by leaving us more vulnerable to subsequent catastrophe.

One way a collapse could lead to extinction is if the population of the largest remaining group fell below the minimum viable population—the level needed for a population to survive. There is no precise figure for this, as it is usually defined probabilistically and depends on many details of the situation: where the population is, what technology they have access to, the sort of catastrophe they have suffered. Estimates range from hundreds of people up to tens of thousands.15 If a catastrophe directly reduces human population to below these levels, it will be more useful to classify it as a direct extinction event, rather than an unrecoverable collapse. And I expect that this will be one of the more common pathways to extinction.

We rarely think seriously about risks to humanity’s entire potential. We encounter them mostly in action films, where our emotional reactions are dulled by their overuse as an easy way to heighten the drama.16 Or we see them in online lists of “ten ways the world could end,” aimed primarily to thrill and entertain. Since the end of the Cold War, we rarely encounter sober discussions by our leading thinkers on what extinction would mean for us, our cultures or humanity. 17 And so in casual contexts people are sometimes flippant about the prospect of human extinction.

But when a risk is made vivid and credible—when it is clear that billions of lives and all future generations are actually on the line—the importance of protecting humanity’s longterm potential is not, for most people, controversial. If we learned that a large asteroid was heading toward Earth, posing a greater than 10 percent chance of human extinction later this century, there would be little debate about whether to make serious efforts to build a deflection system, or to ignore the issue and run the risk. To the contrary, responding to the threat would immediately become one of the world’s top priorities. Thus our lack of concern about these threats is much more to do with not yet believing that there are such threats, than it is about seriously doubting the immensity of the stakes.

Yet it is important to spend a little while trying to understand more clearly the different sources of this importance. Such an understanding can buttress feeling and inspire action; it can bring to light new considerations; and it can aid in decisions about how to set our priorities.

### 1AC – Plan

#### The United States federal government should increase prohibitions on anticompetitive business practices by mandating that standard-setting organizations (SSOs) are in violation of the Sherman Act if the SSO fails to adopt and enforce rules that are effective to prevent the ex-post monopoly power of standard-essential patent owners.

### 1AC – Solvency

#### Applying Section 1 of Sherman prohibits patent holdup

Melamed and Shapiro, 18 – A. Douglas Melamed is Professor of the Practice of Law at Stanford Law School. Carl Shapiro is Professor of Business Strategy at the University of California at Berkeley. “How Antitrust Law Can Make FRAND Commitments More Effective,” Yale Law Journal 127:2110, <https://www.yalelawjournal.org/pdf/MelamedShapiro_12wf7fof.pdf> -- Iowa

Much attention has been paid in recent years to legal issues arising from standard setting, assertion of standard-essential patents, and the requirements imposed by standard-setting organizations that standard-essential patents be licensed on reasonable terms. This Feature argues that a fundamental aspect of the antitrust laws, heretofore overlooked in this context, can play an important role in ensuring that the rules established by standard-setting organizations are effective in preventing owners of standard-essential patents from engaging in patent holdup. It has long been a basic principle of antitrust law that when firms collaborate to engage in conduct that has efficiency benefits, like standard-setting, they violate the antitrust laws if their collaboration also harms competition more than necessary to obtain the efficiency benefits. Both standard-setting organizations and their members can violate Section 1 of the Sherman Act if the organization’s rules are ineffective in preventing owners of standard-essential patents from exploiting the monopoly power they gain as a result of the standard.

#### Any claim to capture the totality of every international event can’t form the basis for a rigorous understanding of IR – only a combination of methods can solve

Bleiker 14 – (6/17, Roland, Professor of International Relations at the University of Queensland, “International Theory Between Reification and Self-Reflective Critique,” International Studies Review, Volume 16, Issue 2, pages 325–327)

This book is part of an increasing trend of scholarly works that have embraced poststructural critique but want to ground it in more positive political foundations, while retaining a reluctance to return to the positivist tendencies that implicitly underpin much of constructivist research. The path that Daniel Levine has carved out is innovative, sophisticated, and convincing. A superb scholarly achievement.

For Levine, the key challenge in international relations (IR) scholarship is what he calls “unchecked reification”: the widespread and dangerous process of forgetting “the distinction between theoretical concepts and the real-world things they mean to describe or to which they refer” (p. 15). The dangers are real, Levine stresses, because IR deals with some of the most difficult issues, from genocides to war. Upholding one subjective position without critical scrutiny can thus have far-reaching consequences. Following Theodor Adorno—who is the key theoretical influence on this book—Levine takes a post-positive position and assumes that the world cannot be known outside of our human perceptions and the values that are inevitably intertwined with them. His ultimate goal is to overcome reification, or, to be more precise, to recognize it as an inevitable aspect of thought so that its dangerous consequences can be mitigated.

Levine proceeds in three stages: First he reviews several decades of IR theories to resurrect critical moments when scholars displayed an acute awareness of the dangers of reification. He refreshingly breaks down distinctions between conventional and progressive scholarship, for he detects self-reflective and critical moments in scholars that are usually associated with straightforward positivist positions (such as E.H. Carr, Hans Morgenthau, or Graham Allison). But Levine also shows how these moments of self-reflexivity never lasted long and were driven out by the compulsion to offer systematic and scientific knowledge.

The second stage of Levine's inquiry outlines why IR scholars regularly closed down critique. Here, he points to a range of factors and phenomena, from peer review processes to the speed at which academics are meant to publish. And here too, he eschews conventional wisdom, showing that work conducted in the wake of the third debate, while explicitly post-positivist and critiquing the reifying tendencies of existing IR scholarship, often lacked critical self-awareness. As a result, Levine believes that many of the respective authors failed to appreciate sufficiently that “reification is a consequence of all thinking—including itself” (p. 68).

The third objective of Levine's book is also the most interesting one. Here, he outlines the path toward what he calls “sustainable critique”: a form of self-reflection that can counter the dangers of reification. Critique, for him, is not just something that is directed outwards, against particular theories or theorists. It is also inward-oriented, ongoing, and sensitive to the “limitations of thought itself” (p. 12).

The challenges that such a sustainable critique faces are formidable. Two stand out: First, if the natural tendency to forget the origins and values of our concepts are as strong as Levine and other Adorno-inspired theorists believe they are, then how can we actually recognize our own reifying tendencies? Are we not all inevitably and subconsciously caught in a web of meanings from which we cannot escape? Second, if one constantly questions one's own perspective, does one not fall into a relativism that loses the ability to establish the kind of stable foundations that are necessary for political action? Adorno has, of course, been critiqued as relentlessly negative, even by his second-generation Frankfurt School successors (from Jürgen Habermas to his IR interpreters, such as Andrew Linklater and Ken Booth).

The response that Levine has to these two sets of legitimate criticisms are, in my view, both convincing and useful at a practical level. He starts off with depicting reification not as a flaw that is meant to be expunged, but as an a priori condition for scholarship. The challenge then is not to let it go unchecked.

Methodological pluralism lies at the heart of Levine's sustainable critique. He borrows from what Adorno calls a “constellation”: an attempt to juxtapose, rather than integrate, different perspectives. It is in this spirit that Levine advocates multiple methods to understand the same event or phenomena. He writes of the need to validate “multiple and mutually incompatible ways of seeing” (p. 63, see also pp. 101–102). In this model, a scholar oscillates back and forth between different methods and paradigms, trying to understand the event in question from multiple perspectives. No single method can ever adequately represent the event or should gain the upper hand. But each should, in a way, recognize and capture details or perspectives that the others cannot (p. 102). In practical terms, this means combining a range of methods even when—or, rather, precisely when—they are deemed incompatible. They can range from poststructual deconstruction to the tools pioneered and championed by positivist social sciences.

The benefit of such a methodological polyphony is not just the opportunity to bring out nuances and new perspectives. Once the false hope of a smooth synthesis has been abandoned, the very incompatibility of the respective perspectives can then be used to identify the reifying tendencies in each of them. For Levine, this is how reification may be “checked at the source” and this is how a “critically reflexive moment might thus be rendered sustainable” (p. 103). It is in this sense that Levine's approach is not really post-foundational but, rather, an attempt to “balance foundationalisms against one another” (p. 14). There are strong parallels here with arguments advanced by assemblage thinking and complexity theory—links that could have been explored in more detail.

#### Sweeping theories can’t explain policy decisions—if they can, then our framework link turns their offense.

Rose, 21—editor of Foreign Affairs (Gideon, “Foreign Policy for Pragmatists,” Foreign Affairs, March/April 2021, dml)

Theories of history, fundamental beliefs about how the world works, are usually assumed rather than argued and rarely get subjected to serious scrutiny. Yet these general ideas set the parameters for all the specific policy choices an administration makes. Know an administration’s theory of history, and much of the rest is easy to fill in.

There are a lot of possible theories of history, but they tend to fall, like Bush’s and Trump’s, into two main camps: optimistic and pessimistic. Thus, the Clinton administration followed its own version of happy directionality—think of it as Bush with less muscular Christianity. And there have been earlier believers in Trump’s dark and stormy night, as well.

Unfortunately, given the stakes of the question, no one really knows whether the optimists or the pessimists have the better case. Political theorists have fought about that for centuries, with neither side winning. A few generations ago, modern social scientists joined in, generating and testing lots of theories in lots of ways, but still, neither camp bested the other. And then, in the last few years, history got interesting again and erased some of the few things the scholars thought they had learned.

As individuals, presidents have had strong views on these matters. As a group, they have not. American foreign policy is notorious for its internal tensions. Its fits and starts and reversals do not fit easily into any single theoretical framework. Yet this pluralism has proved to be a feature, not a bug. Precisely because it has not embraced any one approach to foreign policy consistently, Washington has managed to avoid the worst aspects of all. Blessed with geopolitical privilege, it has slowly stumbled forward, moving over the centuries from peripheral obscurity to global hegemony. Its genius has been less strategic insight than an ability to cut losses.

By now, it seems fair to say that the debate between the optimists and the pessimists will never be settled conclusively, since each perspective knows something big about international politics. Instead of choosing between them, the new administration should keep both truths in its pocket, taking each out as appropriate.

Learning in U.S. foreign policy has come largely across administrations. President Joe Biden’s goal should be to speed up the process, allowing it to happen within an administration. Call it the Bayesian Doctrine: rather than being wedded to its priors, the administration should constantly update them.

The way to do so is to make theorists, not principals, the administration’s true team of rivals, forcing them to make real-world predictions, and to offer testable practical advice, and then seeing whose turn out to be better in real time. In this approach, searching intellectual honesty is more important than ideology; what people think matters less than whether they can change their minds. Constantly calculating implied odds won’t always win pots. But it will help the administration fold bad hands early, increasing its winnings over time.

# 2ac

### case

#### Extinction outweighs -- we should use a utilitarian risk-calculus

Baum and Barrett, 2015- \*co-director of the Global Catastrophic Risk Institute with a PhD from Penn State in geography , \*\*director of research at the Global Catastrophic Risk Institute with a PhD in engineering and public policy form Carnegie Mellon (\*Seth D. Baum, \*\*Anthony M. Barrett, 2015, “The Most Extreme Risks: Global Catastrophes,” published in “The Gower Handbook of Extreme Risk,” edited by Vicki Bier, published by Ashgate Publishing, <http://sethbaum.com/ac/fc_Extreme.pdf>)

2. What Is GCR And Why Is It Important? Taken literally, a global catastrophe can be any event that is in some way catastrophic across the globe. This suggests a rather low threshold for what counts as a global catastrophe. An event causing just one death on each continent (say, from a jet-setting assassin) could rate as a global catastrophe, because surely these deaths would be catastrophic for the deceased and their loved ones. However, in common usage, a global catastrophe would be catastrophic for a significant portion of the globe. Minimum thresholds have variously been set around ten thousand to ten million deaths or $10 billion to $10 trillion in damages (Bostrom and Ćirković 2008), or death of one quarter of the human population (Atkinson 1999; Hempsell 2004). Others have emphasized catastrophes that cause long-term declines in the trajectory of human civilization (Beckstead 2013), that human civilization does not recover from (Maher and Baum 2013), that drastically reduce humanity’s potential for future achievements (Bostrom 2002, using the term “existential risk”), or that result in human extinction (Matheny 2007; Posner 2004). A common theme across all these treatments of GCR is that some catastrophes are vastly more important than others. Carl Sagan was perhaps the first to recognize this, in his commentary on nuclear winter (Sagan 1983). Without nuclear winter, a global nuclear war might kill several hundred million people. This is obviously a major catastrophe, but humanity would presumably carry on. However, with nuclear winter, per Sagan, humanity could go extinct. The loss would be not just an additional four billion or so deaths, but the loss of all future generations. To paraphrase Sagan, the loss would be billions and billions of lives, or even more. Sagan estimated 500 trillion lives, assuming humanity would continue for ten million more years, which he cited as typical for a successful species. Sagan’s 500 trillion number may even be an underestimate. The analysis here takes an adventurous turn, hinging on the evolution of the human species and the long-term fate of the universe. On these long time scales, the descendants of contemporary humans may no longer be recognizably “human”. The issue then is whether the descendants are still worth caring about, whatever they are. If they are, then it begs the question of how many of them there will be. Barring major global catastrophe, Earth will remain habitable for about one billion more years until the Sun gets too warm and large. The rest of the Solar System, Milky Way galaxy, universe, and (if it exists) the multiverse will remain habitable for a lot longer than that (Adams and Laughlin 1997), should our descendants gain the capacity to migrate there. An open question in astronomy is whether it is possible for the descendants of humanity to continue living for an infinite length of time or instead merely an astronomically large but finite length of time (see e.g. Ćirković 2002; Kaku 2005). Either way, the stakes with global catastrophes could be much larger than the loss of 500 trillion lives. Debates about the infinite vs. the merely astronomical are of theoretical interest (Ng 1991; Bossert et al. 2007), but they have limited practical significance. This can be seen when evaluating GCRs from a standard risk-equals-probability-times-magnitude framework. Using Sagan’s 500 trillion lives estimate, it follows that reducing the probability of global catastrophe by a mere one-in-500-trillion chance is of the same significance as saving one human life. Phrased differently, society should try 500 trillion times harder to prevent a global catastrophe than it should to save a person’s life. Or, preventing one million deaths is equivalent to a one-in- 500-million reduction in the probability of global catastrophe. This suggests society should make extremely large investment in GCR reduction, at the expense of virtually all other objectives. Judge and legal scholar Richard Posner made a similar point in monetary terms (Posner 2004). Posner used $50,000 as the value of a statistical human life (VSL) and 12 billion humans as the total loss of life (double the 2004 world population); he describes both figures as significant underestimates. Multiplying them gives $600 trillion as an underestimate of the value of preventing global catastrophe. For comparison, the United States government typically uses a VSL of around one to ten million dollars (Robinson 2007). Multiplying a $10 million VSL with 500 trillion lives gives $5x1021 as the value of preventing global catastrophe. But even using “just" $600 trillion, society should be willing to spend at least that much to prevent a global catastrophe, which converts to being willing to spend at least $1 million for a one-in-500-million reduction in the probability of global catastrophe. Thus while reasonable disagreement exists on how large of a VSL to use and how much to count future generations, even low-end positions suggest vast resource allocations should be redirected to reducing GCR. This conclusion is only strengthened when considering the astronomical size of the stakes, but the same point holds either way. The bottom line is that, as long as something along the lines of the standard risk equals-probability-times-magnitude framework is being used, then even tiny GCR reductions merit significant effort. This point holds especially strongly for risks of catastrophes that would cause permanent harm to global human civilization. The discussion thus far has assumed that all human lives are valued equally. This assumption is not universally held. People often value some people more than others, favoring themselves, their family and friends, their compatriots, their generation, or others whom they identify with. Great debates rage on across moral philosophy, economics, and other fields about how much people should value others who are distant in space, time, or social relation, as well as the unborn members of future generations. This debate is crucial for all valuations of risk, including GCR. Indeed, if each of us only cares about our immediate selves, then global catastrophes may not be especially important, and we probably have better things to do with our time than worry about them. While everyone has the right to their own views and feelings, we find that the strongest arguments are for the widely held position that all human lives should be valued equally. This position is succinctly stated in the United States Declaration of Independence, updated in the 1848 Declaration of Sentiments: “We hold these truths to be self-evident: that all men and women are created equal”. Philosophers speak of an agent-neutral, objective “view from nowhere” (Nagel 1986) or a “veil of ignorance” (Rawls 1971) in which each person considers what is best for society irrespective of which member of society they happen to be. Such a perspective suggests valuing everyone equally, regardless of who they are or where or when they live. This in turn suggests a very high value for reducing GCR, or a high degree of priority for GCR reduction efforts.

# 1ar

### Case

#### degrowth fails and causes transition wars/extinction.

Smith '19 [Noah; 4/5/19; Bloomberg Opinion columnist, former assistant professor of finance at Stony Brook University; "Dumping Capitalism Won’t Save the Planet," https://www.bloomberg.com/opinion/articles/2019-04-05/capitalism-is-more-likely-to-limit-climate-change-than-socialism]

It has become fashionable on social media and in certain publications to argue that capitalism is killing the planet. Even renowned investor Jeremy Grantham, hardly a radical, made that assertion last year. The basic idea is that the profit motive drives the private sector to spew carbon into the air with reckless abandon. Though many economists and some climate activists believe that the problem is best addressed by modifying market incentives with a carbon tax, many activists believe that the problem can’t be addressed without rebuilding the economy along centrally planned lines.

The climate threat is certainly dire, and carbon taxes are unlikely to be enough to solve the problem. But eco-socialism is probably not going to be an effective method of addressing that threat. Dismantling an entire economic system is never easy, and probably would touch off armed conflict and major asdasd upheaval. In the scramble to win those battles, even the socialists would almost certainly abandon their limitation on fossil-fuel use — either to support military efforts, or to keep the population from turning against them. The precedent here is the Soviet Union, whose multidecade effort to reshape its economy by force amid confrontation with the West led to profound environmental degradation. The world's climate does not have several decades to spare.

Even without international conflict, there’s little guarantee that moving away from capitalism would mitigate our impact on the environment. Since socialist leader Evo Morales took power in Bolivia, living standards have improved substantially for the average Bolivian, which is great. But this has come at the cost of higher emissions. Meanwhile, the capitalist U.S managed to decrease its per capita emissions a bit during this same period (though since the U.S. is a rich country, its absolute level of emissions is much higher).

In other words, in terms of economic growth and carbon emissions, Bolivia looks similar to more capitalist developing countries. That suggests that faced with a choice of enriching their people or helping to save the climate, even socialist leaders will often choose the former. And that same political calculus will probably hold in China and the U.S., the world’s top carbon emitters — leaders who demand draconian cuts in living standards in pursuit of environmental goals will have trouble staying in power.

The best hope for the climate therefore lies in reducing the tradeoff between material prosperity and carbon emissions. That requires technology — solar, wind and nuclear power, energy storage, electric cars and other vehicles, carbon-free cement production and so on. The best climate policy plans all involve technological improvement as a key feature.

### K

#### Scenario analysis is pedagogically valuable --- enhances creativity and self-reflexivity, deconstructs cognitive biases and flawed ontological assumptions, and enables the imagination and creation of alternative futures

Barma et al. 16 – (May 2016, [Advance Publication Online on 11/6/15], Naazneen Barma, PhD in Political Science from UC-Berkeley, Assistant Professor of National Security Affairs at the Naval Postgraduate School, Brent Durbin, PhD in Political Science from UC-Berkeley, Professor of Government at Smith College, Eric Lorber, JD from UPenn and PhD in Political Science from Duke, Gibson, Dunn & Crutcher, Rachel Whitlark, PhD in Political Science from GWU, Post-Doctoral Research Fellow with the Project on Managing the Atom and International Security Program within the Belfer Center for Science and International Affairs at Harvard, “‘Imagine a World in Which’: Using Scenarios in Political Science,” International Studies Perspectives 17 (2), pp. 1-19, <http://www.naazneenbarma.com/uploads/2/9/6/9/29695681/using_scenarios_in_political_science_isp_2015.pdf>)

\*\*FYI if anyone is skeptical of Barma’s affiliation with the Naval Postgraduate School, it’s worth looking at her publication history, which is deeply opposed to US hegemony and the existing liberal world order: co-authored an article entitled “How Globalization Went Bad” that has this byline: “From terrorism to global warming, the evils of globalization are more dangerous than ever before. What went wrong? The world became dependent on a single superpower. Only by correcting this imbalance can the world become a safer place.” (http://cisac.fsi.stanford.edu/publications/how\_globalization\_went\_bad)

Over the past decade, the “cult of irrelevance” in political science scholarship has been lamented by a growing chorus (Putnam 2003; Nye 2009; Walt 2009). Prominent scholars of international affairs have diagnosed the roots of the gap between academia and policymaking, made the case for why political science research is valuable for policymaking, and offered a number of ideas for enhancing the policy relevance of scholarship in international relations and comparative politics (Walt 2005,2011; Mead 2010; Van Evera 2010; Jentleson and Ratner 2011; Gallucci 2012; Avey and Desch 2014). Building on these insights, several initiatives have been formed in the attempt to “bridge the gap.”2 Many of the specific efforts put in place by these projects focus on providing scholars with the skills, platforms, and networks to better communicate the findings and implications of their research to the policymaking community, a necessary and worthwhile objective for a field in which theoretical debates, methodological training, and publishing norms tend more and more toward the abstract and esoteric.

Yet enhancing communication between scholars and policymakers is only one component of bridging the gap between international affairs theory and practice. Another crucial component of this bridge is the generation of substantive research programs that are actually policy relevant—a challenge to which less concerted attention has been paid. The dual challenges of bridging the gap are especially acute for graduate students, a particular irony since many enter the discipline with the explicit hope of informing policy. In a field that has an admirable devotion to pedagogical self-reflection, strikingly little attention is paid to techniques for generating policy-relevant ideas for dissertation and other research topics. Although numerous articles and conference workshops are devoted to the importance of experiential and problem-based learning, especially through techniques of simulation that emulate policymaking processes (Loggins 2009; Butcher 2012; Glasgow 2012; Rothman 2012; DiCicco 2014), little has been written about the use of such techniques for generating and developing innovative research ideas.

This article outlines an experiential and problem-based approach to developing a political science research program using scenario analysis. It focuses especially on illuminating the research generation and pedagogical benefits of this technique by describing the use of scenarios in the annual New Era Foreign Policy Conference (NEFPC), which brings together doctoral students of international and comparative affairs who share a demonstrated interest in policy-relevant scholarship.3 In the introductory section, the article outlines the practice of scenario analysis and considers the utility of the technique in political science. We argue that scenario analysis should be viewed as a tool to stimulate problem-based learning for doctoral students and discuss the broader scholarly benefits of using scenarios to help generate research ideas. The second section details the manner in which NEFPC deploys scenario analysis. The third section reflects upon some of the concrete scholarly benefits that have been realized from the scenario format. The fourth section offers insights on the pedagogical potential associated with using scenarios in the classroom across levels of study. A brief conclusion reflects on the importance of developing specific techniques to aid those who wish to generate political science scholarship of relevance to the policy world.

What Are Scenarios and Why Use Them in Political Science?

Scenario analysis is perceived most commonly as a technique for examining the robustness of strategy. It can immerse decision makers in future states that go beyond conventional extrapolations of current trends, preparing them to take advantage of unexpected opportunities and to protect themselves from adverse exogenous shocks. The global petroleum company Shell, a pioneer of the technique, characterizes scenario analysis as the art of considering “what if” questions about possible future worlds. Scenario analysis is thus typically seen as serving the purposes of corporate planning or as a policy tool to be used in combination with simulations of decision making. Yet scenario analysis is not inherently limited to these uses. This section provides a brief overview of the practice of scenario analysis and the motivations underpinning its uses. It then makes a case for the utility of the technique for political science scholarship and describes how the scenarios deployed at NEFPC were created.

The Art of Scenario Analysis

We characterize scenario analysis as the art of juxtaposing current trends in unexpected combinations in order to articulate surprising and yet plausible futures, often referred to as “alternative worlds.” Scenarios are thus explicitly not forecasts or projections based on linear extrapolations of contemporary patterns, and they are not hypothesis-based expert predictions. Nor should they be equated with simulations, which are best characterized as functional representations of real institutions or decision-making processes (Asal 2005). Instead, they are depictions of possible future states of the world, offered together with a narrative of the driving causal forces and potential exogenous shocks that could lead to those futures. Good scenarios thus rely on explicit causal propositions that, independent of one another, are plausible—yet, when combined, suggest surprising and sometimes controversial future worlds. For example, few predicted the dramatic fall in oil prices toward the end of 2014. Yet independent driving forces, such as the shale gas revolution in the United States, China’s slowing economic growth, and declining conflict in major Middle Eastern oil producers such as Libya, were all recognized secular trends that—combined with OPEC’s decision not to take concerted action as prices began to decline—came together in an unexpected way.

While scenario analysis played a role in war gaming and strategic planning during the Cold War, the real antecedents of the contemporary practice are found in corporate futures studies of the late 1960s and early 1970s (Raskin et al. 2005). Scenario analysis was essentially initiated at Royal Dutch Shell in 1965, with the realization that the usual forecasting techniques and models were not capturing the rapidly changing environment in which the company operated (Wack 1985; Schwartz 1991). In particular, it had become evident that straight-line extrapolations of past global trends were inadequate for anticipating the evolving business environment. Shell-style scenario planning “helped break the habit, ingrained in most corporate planning, of assuming that the future will look much like the present” (Wilkinson and Kupers 2013, 4). Using scenario thinking, Shell anticipated the possibility of two Arab-induced oil shocks in the 1970s and hence was able to position itself for major disruptions in the global petroleum sector.

Building on its corporate roots, scenario analysis has become a standard policymaking tool. For example, the Project on Forward Engagement advocates linking systematic foresight, which it defines as the disciplined analysis of alternative futures, to planning and feedback loops to better equip the United States to meet contemporary governance challenges (Fuerth 2011). Another prominent application of scenario thinking is found in the National Intelligence Council’s series of Global Trends reports, issued every four years to aid policymakers in anticipating and planning for future challenges. These reports present a handful of “alternative worlds” approximately twenty years into the future, carefully constructed on the basis of emerging global trends, risks, and opportunities, and intended to stimulate thinking about geopolitical change and its effects.4 As with corporate scenario analysis, the technique can be used in foreign policymaking for long-range general planning purposes as well as for anticipating and coping with more narrow and immediate challenges. An example of the latter is the German Marshall Fund’s EuroFutures project, which uses four scenarios to map the potential consequences of the Euro-area financial crisis (German Marshall Fund 2013).

Several features make scenario analysis particularly useful for policymaking.5 Long-term global trends across a number of different realms—social, technological, environmental, economic, and political—combine in often-unexpected ways to produce unforeseen challenges. Yet the ability of decision makers to imagine, let alone prepare for, discontinuities in the policy realm is constrained by their existing mental models and maps. This limitation is exacerbated by well-known cognitive bias tendencies such as groupthink and confirmation bias (Jervis 1976; Janis 1982; Tetlock 2005). The power of scenarios lies in their ability to help individuals break out of conventional modes of thinking and analysis by introducing unusual combinations of trends and deliberate discontinuities in narratives about the future. Imagining alternative future worlds through a structured analytical process enables policymakers to envision and thereby adapt to something altogether different from the known present.

Designing Scenarios for Political Science Inquiry

The characteristics of scenario analysis that commend its use to policymakers also make it well suited to helping political scientists generate and develop policy-relevant research programs. Scenarios are essentially textured, plausible, and relevant stories that help us imagine how the future political-economic world could be different from the past in a manner that highlights policy challenges and opportunities. For example, terrorist organizations are a known threat that have captured the attention of the policy community, yet our responses to them tend to be linear and reactive. Scenarios that explore how seemingly unrelated vectors of change—the rise of a new peer competitor in the East that diverts strategic attention, volatile commodity prices that empower and disempower various state and nonstate actors in surprising ways, and the destabilizing effects of climate change or infectious disease pandemics—can be useful for illuminating the nature and limits of the terrorist threat in ways that may be missed by a narrower focus on recognized states and groups. By illuminating the potential strategic significance of specific and yet poorly understood opportunities and threats, scenario analysis helps to identify crucial gaps in our collective understanding of global politicaleconomic trends and dynamics. The notion of “exogeneity”—so prevalent in social science scholarship—applies to models of reality, not to reality itself. Very simply, scenario analysis can throw into sharp relief often-overlooked yet pressing questions in international affairs that demand focused investigation.

Scenarios thus offer, in principle, an innovative tool for developing a political science research agenda. In practice, achieving this objective requires careful tailoring of the approach. The specific scenario analysis technique we outline below was designed and refined to provide a structured experiential process for generating problem-based research questions with contemporary international policy relevance.6 The first step in the process of creating the scenario set described here was to identify important causal forces in contemporary global affairs. Consensus was not the goal; on the contrary, some of these causal statements represented competing theories about global change (e.g., a resurgence of the nation-state vs. border-evading globalizing forces). A major principle underpinning the transformation of these causal drivers into possible future worlds was to “simplify, then exaggerate” them, before fleshing out the emerging story with more details.7 Thus, the contours of the future world were drawn first in the scenario, with details about the possible pathways to that point filled in second. It is entirely possible, indeed probable, that some of the causal claims that turned into parts of scenarios were exaggerated so much as to be implausible, and that an unavoidable degree of bias or our own form of groupthink went into construction of the scenarios. One of the great strengths of scenario analysis, however, is that the scenario discussions themselves, as described below, lay bare these especially implausible claims and systematic biases.8

An explicit methodological approach underlies the written scenarios themselves as well as the analytical process around them—that of case-centered, structured, focused comparison, intended especially to shed light on new causal mechanisms (George and Bennett 2005). The use of scenarios is similar to counterfactual analysis in that it modifies certain variables in a given situation in order to analyze the resulting effects (Fearon 1991). Whereas counterfactuals are traditionally retrospective in nature and explore events that did not actually occur in the context of known history, our scenarios are deliberately forward-looking and are designed to explore potential futures that could unfold. As such, counterfactual analysis is especially well suited to identifying how individual events might expand or shift the “funnel of choices” available to political actors and thus lead to different historical outcomes (Nye 2005, 68–69), while forward-looking scenario analysis can better illuminate surprising intersections and sociopolitical dynamics without the perceptual constraints imposed by fine-grained historical knowledge. We see scenarios as a complementary resource for exploring these dynamics in international affairs, rather than as a replacement for counterfactual analysis, historical case studies, or other methodological tools.

In the scenario process developed for NEFPC, three distinct scenarios are employed, acting as cases for analytical comparison. Each scenario, as detailed below, includes a set of explicit “driving forces” which represent hypotheses about causal mechanisms worth investigating in evolving international affairs. The scenario analysis process itself employs templates (discussed further below) to serve as a graphical representation of a structured, focused investigation and thereby as the research tool for conducting case-centered comparative analysis (George and Bennett 2005). In essence, these templates articulate key observable implications within the alternative worlds of the scenarios and serve as a framework for capturing the data that emerge (King, Keohane, and Verba 1994). Finally, this structured, focused comparison serves as the basis for the cross-case session emerging from the scenario analysis that leads directly to the articulation of new research agendas.

The scenario process described here has thus been carefully designed to offer some guidance to policy-oriented graduate students who are otherwise left to the relatively unstructured norms by which political science dissertation ideas are typically developed. The initial articulation of a dissertation project is generally an idiosyncratic and personal undertaking (Useem 1997; Rothman 2008), whereby students might choose topics based on their coursework, their own previous policy exposure, or the topics studied by their advisors. Research agendas are thus typically developed by looking for “puzzles” in existing research programs (Kuhn 1996). Doctoral students also, understandably, often choose topics that are particularly amenable to garnering research funding. Conventional grant programs typically base their funding priorities on extrapolations from what has been important in the recent past—leading to, for example, the prevalence of Japan and Soviet studies in the mid-1980s or terrorism studies in the 2000s—in the absence of any alternative method for identifying questions of likely future significance.

The scenario approach to generating research ideas is grounded in the belief that these traditional approaches can be complemented by identifying questions likely to be of great empirical importance in the real world, even if these do not appear as puzzles in existing research programs or as clear extrapolations from past events. The scenarios analyzed at NEFPC envision alternative worlds that could develop in the medium (five to seven year) term and are designed to tease out issues scholars and policymakers may encounter in the relatively near future so that they can begin thinking critically about them now. This timeframe offers a period distant enough from the present as to avoid falling into current events analysis, but not so far into the future as to seem like science fiction. In imagining the worlds in which these scenarios might come to pass, participants learn strategies for avoiding failures of creativity and for overturning the assumptions that prevent scholars and analysts from anticipating and understanding the pivotal junctures that arise in international affairs.

#### Settler colonialism is ongoing, but not a structure---their view displaces the role of indigenous resistance which forecloses transformative organizing

Beenash Jafri 17, Visiting Assistant Professor of American Studies & Gender, Sexuality and Women's Studies at UC Davis, “Ongoing Colonial Violence in Settler States,” http://csalateral.org/issue/6-1/forum-alt-humanities-settler-colonialism-ongoing-violence-jafri/

Retrospectively, however, I believe there is a qualitative difference between arguing that colonization is ongoing, and arguing that colonization is a structure, even as the two may be intertwined. The former gestures to repetition of an originary violence, emphasizing the continual reenactment of colonization, whereas the latter emphasizes the totalizing effects of originary violence, emphasizing colonization’s erasures. To be sure, remembrance and erasure have a dialectical relationship with one another. Yet, there are political-ethical implications to highlighting one over the other. For example, engaging colonization as ongoing generates possibilities for focusing on colonial violence and its intersectional entanglements with racialized, gendered, and sexualized exclusion and exploitation, as exemplified by scholars working on settler colonialism through the lenses of women of color feminism, black feminism, queer of color critique, and critical race and ethnic studies.9 In particular, underscoring the repetition of colonial violence enables (even if it does not guarantee) the centering of Indigenous peoples—who are still here, and still resisting colonialism—while drawing attention to experiences of violence and their embodiment through categories of difference such as race, gender, and sexuality, as well as their connections to land. To return to Razack—her analysis of the Pamela George case elucidates that colonial violence in settler societies happens again and again, with the support of social institutions and discourses. Framing that violence as an intrinsic or established feature of settler societies implies that it has been embedded in a structure that simply replicates itself. Razack’s framing suggests that the violence is active and dynamic—allowing for the possibility of intervention and transformation—whereas framing colonial violence as an intrinsic component of settler societies suggests that the violence is always already there, thus limiting, even if not foreclosing, transformative possibilities. I think here too of Tiffany King’s essay “New World Grammars” (2016), which emphasizes colonialism as conquest rather than as settled structure in order to foreground the encounters with violence that subsequently form the basis for Black and Native relationality.10 King’s essay is included in the Fall 2016 Theory and Event special issue “On Colonial Unknowing,” edited by Manu Vimalassery, Juliana Hu Pegues, and Alyosha Goldstein, which insists on the indispensability of “postcolonial feminist theory, critical disability studies, queer theory, and women of color feminism” for undoing the disavowal of colonial relations that characterizes white settler societies.11 In their introduction to the special issue, Vimalassery, Pegues, and Goldstein posit that the over-emphasis on settler colonialism as structure unwittingly obscures settler colonialism’s historicity, or the ways in which it operates and has operated as event, and in conjunction with other modes of power.12

At the same time, both settler colonial studies and critical race feminist/queer approaches are “top down” insofar as they take as their point of departure colonizers/colonial violence. This is markedly different from Indigenous Studies approaches, which investigate how Indigenous peoples negotiate, contest, and resist colonial power. For instance, two recent, major works in the field, Audra Simpson’s Mohawk Interruptus and Glen Coulthard’s Red Skin, White Masks, have as their core focus Indigenous expressions of sovereignty and decolonization in settler colonial contexts.13 As Kauanui makes clear in her Lateral essay, “any meaningful engagement with theories of settler colonialism—whether Wolfe’s or others’—necessarily needs to tend to the question of indigeneity. Settler Colonial Studies does not, should not, and cannot replace Indigenous Studies.”14 While both settler colonial studies and critical race feminist/queer approaches offer generative insights into the workings of colonial power, those of us working from these approaches need to be mindful of these distinctions and how they position us differently with respect to questions of decolonization. Investigations of settler colonialism may inadvertently center non-Natives and reproduce colonial violence if not attentive to Indigenous voices, struggles, and perspectives. Professional academic expectations that prioritize the reproduction of disciplinary (or interdisciplinary) methods over political critique facilitate this centering of non-Natives. In my own work, I strive, usually imperfectly, to counter this tendency by thinking and working in an anti-disciplinary mode. In my current project—which engages with diasporic film’s relationships to settler colonialism—this means refusing to remain faithful to disciplinary demands of ethnic, gender, film, or settler colonial studies if and when they reproduce epistemic violence. Politically motivated and grounded work must be invested not in reproducing fields and disciplines, but in engaging in intellectual work to the extent that it facilitates social transformation.

#### Settler-colonialism is a sum of many injustices – their criticism homogenizes all experiences without addressing diverse nuances of settlerism.

**Pappas ‘17**—Associate Professor of Philosophy at Texas A&M University [Gregory Fernando, 2017, “The Limitations and Dangers of Decolonial Philosophies: Lessons from Zapatista Luis Villoro”, Radical Philosophy Review, DOI: 10.5840/radphilrev201732768] // shurst

Notice how different Villoro’s starting point is from the usual theoretical, abstract, and global in scope approach of the decolonial turn. As a reaction to the hegemonic Eurocentric paradigms that disguise injustices under the assumption of a universal or objective point of view, decolonial thinking has stressed that our knowledge is always situated, but situated where? The context in which knowledge is situated, as well as of the injustices they aim to diagnose, are often described as power structures (global hierarchies) 14. “Only when we have the life experience [vivencia] that a direct harm suffered in a relation with others have no justification, do we have a clear perception of injustice” Villoro, Los retos de la sociedad por venir, 19 (my translation). 15. Ibid., 22. Villoro starts with a general phenomenological description of these experiences as harmful and intrinsically connected to awareness of one’s identity and living in a power relation with others. Villoro claims that the immediate experiences of injustice is experienced as an exclusion or harm that quickly turns into an awareness that it may be caused by acts or omissions of others. 16. His approach led him to critique the way the West has universalized a particular conception of humans, rights, and justice. In Los retos de la sociedad por venir he argues that if any positive and regulative conception of what is the just social order and what are the basic human rights must emerge and be grounded in trying to ameliorate experiences of injustice, then we cannot assume that the circumstances of exclusion are the same everywhere and at all times. According to Villoro, the doctrine of human rights was formulated in a particular place and exact date: the result of the European bourgeoisie experiencing exclusion in the eighteenth century. In many countries like Mexico, the expereince of exclusion is very different: the desired individual freedom cannot be exercised without other conditions such as food, housing, health, education, and membership in a community. If we are really serious about coming up with a theory of basic rights for all societies, then we need to start with an honest and thorough inquiry into all corners of the world about what exclusions are experienced so that we can determine what actual rights are needed. The Limitations and Dangers of Decolonial Philosophies located in a geopolitical context (in a world-system).17 They prescribe that Latin Americans think from a particular historical and social reality, but this is understood as seeing oneself in the periphery of a global order. The tendency among decolonialists to favor this theoretical starting point and to gravitate toward global views of injustice comes from the influence of world-system and dependency theory analysis in economics. However, a key influence, not often recognized, is a general way of thinking about problems of injustice that is, ironically, European in origin. There is a long tradition of sociopolitical thought in Europe whose starting point is the injustices of society at large that have a history and persist through time, and where the task of political philosophy is to detect and diagnose the presence of these historical injustices in particular situations of injustice. For example, critical theory today has inherited an approach to social philosophy characteristic of the European tradition that goes back to Rousseau, Marx, Weber, Freud, Marcuse, and others. According to Roberto Frega, this tradition takes society to be intrinsically sick with a malaise that requires adopting a critical historical stance in order to understand how the systematic sickness affects present social situations. In other words, this approach assumes that: A philosophical critique of specific social situations can be accomplished only under the assumption of a broader and full blown critique of society in its entirety: as a critique of capitalism, of modernity, of western civilization, of rationality itself. The idea of social pathology becomes intelligible only against the background of a philosophy of history or of an anthropology of decline, according to which the distortions of actual social life are but the inevitable consequence of longstanding historical processes.18 For decolonialists the sickness that afflicts Latin America is the global hegemony—economic, military, political, and cultural—of the West, first via Europe and then the United States, broadcast under the philosophy of the Enlightenment with Europe carrying the mission. As Vallega explains, “Latin America suffered and continues to suffer under western hegemonic modernity and its system of power and knowledge.”19 Villoro believed that at the turn of the twentieth century one of the modern ideas we inherited that must be questioned is “global explanations” because “general ideologies tend to slip into totalitarianism in our thinking.”20 17. For an excellent article that explains the influence of world system and dependency theory on this movement see Grosfoguel, “The Epistemic Decolonial Turn.” 18. Frega, “Between Pragmatism and Critical Theory,” 6. 19. Vallega, Latin American Philosophy from Identity to Radical Exteriority, 3. 20. Villoro, “Filosofia para un fin de epoca,” my translation. Gregory Fernando Pappas I think Villoro’s reservations are warranted and can be extended to decolonial thought. Granted, a theory of grand historical evil and systematic sickness in the Americas can have great explanatory power and provide theoretical comfort,21 but where are we standing when we start with such large historical metanarratives? How is it this not a God’s-eye view of history? Is there a danger of slipping back into a form of universalism, which they have explicitly avoided? Isn’t there a danger that when a theory explains so much it becomes nonfalsifiable and therefore nonempirical? In any case, the quest for a comprehensive explanation and a grand historical narrative is also in danger of not capturing the historical and concrete particularity (pluralism, complexity, uniqueness) of actual injustices. When we start at the broad level of globality and history as decolonialists often do, there is a risk of oversimplifying and encouraging blindness about concrete injustices. Consulting recent rigorous research done by historians and social anthropologist about Latin America (more on this later) confirms what many know from simply living there: most injustices in different parts of the Americas are so complex that any simple explanation merits the suspicion of being wishful thinking. To be fair, compared to Marxism the decolonial turn added complexity and made a significant shift. Marxism as a tool was not sensitive enough to the realities on the ground in Latin America. It was a universal model that did not adequately address its particular problems. However, decolonialists do not seem to have abandoned or questioned a similar methodological starting point. As a result, decolonial theories may sometimes be presented with the same pretension of offering a universal diagnosis of the complex and tragic problems of Latin America. Perhaps a more pluralistic and context-sensitive approach could avoid some of the dangers I have presented. Here is where the contrast with Villoro is useful. To be sure, Villoro was critical of the same things as the decolonialists: the Eurocentric narrative, modernity, liberalism, and so on. However, when he takes a reflective historical perspective about these large historical and lumpy categories there is a difference in how he does it. He anchors his account in his local present situation, is very specific about what particular aspects of modernity or liberalism are problematic, and does not have one preferred category of analysis such as coloniality. For most decolonial theorists, however, the legacy of colonialism is central (understood broadly as coloniality), and the situation of the oppressed is to be analyzed in relation to a global narrative in which Europe is at its center or in relation to modernity or a global capitalist system. The decolonial project is centered 21. For recent excellent work that demonstrates this see Mendieta, Decolonizing Epistemologies; Mignolo, Local Histories/Global Designs; Moraña, Dussel, and Jauregui, Coloniality at Large. The Limitations and Dangers of Decolonial Philosophies on detecting plural manifestations of the single evolving domination (a social pathology) that started in 1492. Liberation is understood as decolonization via undoing “the coloniality of power” and affirming what has been “conceal[ed] by the Western modern epistemic hegemony.”22 In contrast, at the center of Villoro’s approach is liberation from domination, and the causes of domination are plural and contextual and therefore too complex to be articulated or framed by a global theory of domination. For Villoro liberation is a local event; one of its tools is to sometimes take a global perspective, and the complexity of the problems on the ground may not be fully captured by even our best academic global historical narratives and categories. He inquired into the history of a systematic injustice in order to facilitate inquiry into the present unique, context-bound injustice. If injustice is an illness then Villoro’s approach takes as its main focus diagnosing and treating the particular present illness, i.e., the particular injustice in a corner of Mexico, and not a global “social pathology” or some single transhistorical source of injustice. As concepts and categories, global hierarchies, white supremacy, and coloniality can be great tools that can have planetary significance. One could even argue that they pick out much-larger areas of people’s lives and injustices than the categories of class and gender. However, in spite of their reach and explanatory theoretical value they are nothing more than tools to make reference to and ameliorate particular injustices experienced (suffered) in the midst of a particular and unique relationship in a situation. Why is this important? In present situations (events) of injustice in the Americas there are not only intersecting histories of white supremacy, capitalist exploitation, and patriarchy; there are also unique events, multiple countries with different complex histories and present circumstances, as well as a variety of responsible agents—local and international governments, corporations, particular individuals and communities. Regardless of how much a theory of global domination that centers on coloniality can actually explain, it is reasonable to worry about what it leaves out and question the extent to which it really helps those who are victims of injustice. A wider net may bring more fish from the ocean, but I am not sure this applies to injustices. Such theories may lead to analysis or diagnosis that while true at some level, may actually have very little to offer in terms of more specific diagnoses and solutions that can be of any help to someone suffering an injustice. However, for Mignolo coloniality is “the underlying logic of the foundation and unfolding of Western civilization from the Renaissance to today”23 Coloniality helps explain how race and gender became the basis of classification in the Americas, but it remains an open question how these categories actually operate in particular countries or even in particular unjust events. We can say all we want that the oppressed live in power structures located in global hierarchies and a world-system, but that does not fully capture where they are. However useful and true that account may be about someone’s particular circumstances, it is still overabstracted. Knowing how people have been classified according to a colonial matrix of power is important, but only insofar as it may help us inquire about the present actual causes of an injustice. Moreover, it is not obvious how the use of a single name and the prism of a single cause helps in trying to ameliorate the particular and context-specific evils from which particular countries and people in Latin America suffer. One could reply that my worries are misplaced. Calling decolonization the cure may suggest that coloniality is some sort of single homogeneous cause, but the decolonialists have distinguished between different types of coloniality and have included in their diagnosis a plurality of causes such as exploitation of resources, political manipulation, and assimilation of people from other cultures. If this is the case then why not address these more particular evils, unless one is really committed to some unitary account in which all of these evils can be reduced to a singular cause?

#### Settler colonialism studies fail --- they reify a binary between native and non-indigenous and displace true indigenous scholarship

Snelgrove et al, 14 - Master’s Candidate in Indigenous Governance at the University of Victoria (Corey, Rita Kaur Dhamoon University of Victoria Jeff Corntassel University of Victoria Decolonization: Indigeneity, Education & Society Vol. 3, No. 2, 2014, pp. 1-32 Unsettling settler colonialism: The discourse and politics of settlers, and solidarity with Indigenous nations)//jml

In the tradition of critical approaches, scholars of (or engaging with) settler colonialism have also identified several challenges or weaknesses of this burgeoning field of study. Joanne Barker (2011), on the blog Tequila Sovereign, questioned the specificity of settler colonialism. Drawing on the etymological origins of “settle” as ‘to reconcile’, as well as in light of settler state apologies, Barker warns that settler colonialism may signal a nation-state that has moved “beyond its own tragically imperial and colonial history to be something else, still albeit colonial, but not quite entirely colonial.” Second, Macoun and Strakosch (2013) note that settler colonial theory “is primarily a settler framework” that is largely about settler intentions to think through colonial relations (p. 427). This in itself may not be a problem, but as Macoun and Strakosch warn, settler colonial studies can re-empower non-Indigenous academic voices while marginalizing Indigenous resistance (2013, p. 436). Third, while settler colonialism is posited as both a condition of possibility (Rifkin, 2013) and a site of potential hope (Barker, 2012), there is an underlying “colonial fatalism” (Macoun and Strakosch, 2013, p. 435) that posits a structural inevitability to settler colonial relations. Macoun and Strakosch (2013) in particular note that settler colonialism is unable to transcend itself precisely because it is conceptualized as a structure, where the only polarizing choices available to Indigenous peoples are either to be co- opted or hold a position of resistance/sovereign, while anti-colonial action by settlers is foreclosed. Fourth, the framework of settler colonialism has fostered over-characterizations of binary positions. Saranillio (2013), for instance, notes two common charges against settler colonial studies: that it affirms a binary of Indigenous and non-Indigenous, and that it leads to a neo-racist form of politics that requires non-Natives leave Indigenous territories (arguments that Sarinillo rejects). Moreover, we note that this binary, at times, has the effect of treating settler colonialism as a meta-structure, thus erasing both its contingency and the dynamics that co- constitute racist, patriarchal, homonationalist, ablest, and capitalist settler colonialism. The institutionalization of settler colonial studies is quite remarkable. While some Indigenous journals have struggled to receive institutional support and funding, the journal Settler Colonial Studies – first published in 2011 in an open access format (entirely run on volunteer labour) to bring together critical scholarship on settler colonialism as a distinct social, cultural and historical formation with ongoing political effects (Edmonds and Carey, 2013, p. 2) – moved to a large academic publishing house, Taylor & Francis, within two years of being established. This institutionalization has been coupled with a proliferation of academic conferences, workshops, courses, and has also moved beyond academic confines through blogs, websites, workshops and teach-ins. The institutionalization of settler colonial studies (rather than Indigenous studies) is on the one hand a significant shift in the academy. On the other hand, as de Leeuw, Greenwood, and Lindsay (2013) rightly argue, even when (and perhaps because) there are good intentions to decolonize and to “cultivate a culture of ‘doing the right thing,’” there are no “fundamental shifts in power imbalances between Indigenous and non-Indigenous peoples or the systems within which we operate” (p. 386). Settler colonialism and the study of settler colonialism, in other words, cannot be decolonized because of good intentions. Following this, paradoxically and in deeply troubling ways, settler colonial studies can displace, overshadow, or even mask over Indigenous studies (for example, see Veracini, 2013) and variations within Indigenous studies, especially feminist and queer Indigenous work that is centred on Indigenous resurgence. Indeed the link between Indigenous studies and settler colonial studies is still in process. The synergies between the literature by/on two-spirited Indigenous identities, queer theory, Indigenous studies more broadly, and settler colonial studies are notable in their interwoven conversations across fields of study. But at times, Indigenous peoples and issues are de-centred in settler colonial studies (for example, Rifkin, 2013, p. 323). Furthermore, while Rifkin is right to argue that settler colonial practices and processes operate in everyday ways, are these practices really in the “background” (2013, p. 331), and for whom? Is settler colonialism “largely invisible”, as Barker (2012) claims?

#### No co-option disad – interrogation of the colonial system through legal strategies ruptures the intelligibility of settler colonialism and creates meaningful progress

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Brenna, “Strategies of Legal Rupture: the politics of judgment” [http://www.forensic-architecture.org/wp-content/uploads/2013/02/BHANDAR-Brenna.-Strategies-of-Legal-Rupture.pdf]

In this article, my aim is to consider the use of law as a political strategy of rupture in colonial and post - colonial nation states. The question of whether and how to use law in order to transform and potentially shatter an existing political - legal order is one that continues t o plague legal advocates in a variety of places, from Australia, to India, to Canada to Israel/Palestine. For example, the struggle for the recognition of indigenous rights in the context of colonial settler regimes has often produced pyrrhic victories. 21 T he question of indigenous sovereignty is ultimately quashed, and aboriginal rights are paradoxically recognised as an interest that derives from the prior occupation of the land by aboriginal communities but is at the same time parasitic on underlying Crow n sovereignty; an interest that can be justifiably limited in the interests of settlement. 22 Thus, the primary and inescapable question remains: how does one utilise the law without re - inscribing the very colonial legal order that one is attempting to break down? 23 I argue that this is an inescapable dilemma; as critical race theorists and indigenous scholars have shown, to not avail ourselves of the law in an effort to ameliorate social ills, and to promote and protect the rights of oppressed minorities is to essentially abrogate one’s political responsibilities. Moreover, the reality of political struggle (particularly of the anti - colonial variety) is that it is of a diffuse and varied nature, engaging multiple different tactics in order to achieve its ends.¶ The notion of the ruptural defence emerges from the work of Jacques Vergès, a French advocate and subject of a film by Barbet Schroder entitled Terror’s Advocate . The film is as much a portrait of Vergès ’ life as it is a series of vignettes of armed anti - colonial and anti - imperial struggle during the decades between the late 1940s and the 1980s. I should say at the beginning that I do not perceive Vergès as a heroic figure or defender of the oppressed; we can see from his later decisions to defend Klaus Barbie, for instance, that his desire to reveal the violence wrought by European imperial powers was pursued at any cost. But in tracing the development of what Vergès called the ruptural defence, the film takes us to the heart of the inescapable paradoxes and contradictions involved in using law as a means of political resistance in colonial and post - colonial contexts. I want to explore the strategy of rupture as developed by Vergès but also in a broader se nse, to consider whether there is in this defence strategy that arose in colonial, criminal law contexts, something that is generalisable, something that can be drawn out to form a notion of legal rupture more generally.¶ To begin then, an exploration of Vergès’ ‘rupture defence’, or rendered more eloquently, a strategy of rupture. At the beginning of the film, Vergès comments on his strategy for the trial of Djamila Bouhired, a member of the FLN, who was tried in a military court for planting a bomb in a cafe in Algiers in 1956. Vergès states the following in relation to the trial:¶ The problem wasn’t to play for sympathy as left - wing lawyers advised us to do, from the murderous fools who judged us, but to taunt them, to provoke incidents that would reac h people in Paris, London, Brussels and Cairo...¶ The refusal to play for sympathy from those empowered to uphold the law in a colonial legal order hints at the much more profound refusal that lies at the basis of the strategy of rupture, which we see unf old throughout the film. In refusing to accept the characterisation of Djamila’s acts as criminal acts, Vergès challenges the very legal categories that were used to criminalise, condemn and punish anti - colonial resistance. The refusal to make the defendan ts’ actions cognisable to and intelligible within the colonial legal framework breaks the capacity of the judges to adjudicate in at least two senses. First, their moral authority is radically undermined by an outright rejection of the legal terms of refer ence and categories which they are appointed to uphold. The legal strategy of rupture is a politics of refusal that calls into question the justiciability of the purported crime by challenging the moral and political jurisdiction of the colonial legal order itself.¶ Second, the refusal of the legal categorisation of the FLN acts of resistance as criminal brought into light the contradictions inherent in the official French position and the reality of the Algerian context. This was not, as the official line would have it, simply a case of French criminal law being applied to French nationals. The repeated assertion that the defendants were independent Algerian actors fighting against colonial brutality, coupled with repeated revelations of the use of torture on political prisoners made it impossible for the contradictions to be “rationally contained” within the normal operations of criminal law. The revelation and denunciation of torture in the courtroom not to prevent statements or admissions from being admis sable as evidence (as such violations would normally be used) but to challenge the legitimacy of the imposition of a colonial legal order on the Algerian people made the normal operation of criminal law procedure virtually impossible . 24 And it is in this ma king impossible of the operation of the legal order that the power of the strategy of rupture lies. ¶ In refusing to render his clients’ actions intelligible to a colonial (and later imperial) legal framework, Vergès makes visible the obvious hypocrisy of the colonial legal order that attempts to punish resistance that employs violence, in the same spatial temporal boundaries where the brute violence of colonial rule saturates everyday life. In doing so, this is a strategy that challenges the monopoly of le gitimate violence the state holds. Vergès aims to render visible the false distinction between common crimes and political crimes, or more broadly, the separation of law and politics. 25 The ruptural defence seeks to subvert the order and structure of the tr ial by re - defining the relation between accuser and accused. This illumination of the hypocrisy of the colonial state questions the authority of its judiciary to adjudicate. But more than this, his strategy is ruptural in two senses that are fundamental to the operation of the law in the colonial settler and post - colonial contexts. The first is that the space of opposition within the legal confrontation is reconfigured. The second, and related point, is that the strictures of a legal politics of recognition are shattered.¶ In relation to the first point, a space of opposition is, in the view of Fanon, missing in certain senses, in the colonial context. A space of opposition in which a genuinely mutual struggle between coloniser and colonised can occur is de nied by spatial and legal - political strategies of containment and segregation. While these strategies also exhibit great degre es of plasticity 26 , the control over such mobility remains to a great degree in the hands of the colonial occupier. The legal strategy of rupture creates a space of political opposition in the courtroom that cannot be absorbed or appropriated by the legal order. In Christodoulidis’ view, this lack of co - option is the crux of the strategy of rupture.¶ This strategy of rupture also poin ts to a path that challenges the limits of a politics of recognition, often one of the key legal and political strategies utilised by indigenous and racial minority communities in their struggles for justice. Claims for recognition in a juridical frame ine vitably involve a variety of onto - epistemological closures. 27 Whether because of the impossible and irreconciliable relation between the need for universal norms and laws and the specificities of the particular claims that come before the law, or because of the need to fit one’s claims within legal - political categories that are already intelligible within the legal order, legal recognition has been critiqued, particularly in regards to colonial settler societies, on the basis that it only allows identities, legal claims, ways of being that are always - already proper to the existing juridical order to be recognised by the law. In the Canadian context, for instance, many scholars have elucidated the ways in which the legal doctrine of aboriginal title to land im ports Anglo - American concepts of ownership into the heart of its definition; and moreover, defines aboriginality on the basis of a fixed, static concept of cultural difference. The strategy of rupture elides the violence of recognition by challenging the legitimacy of the colonial legal order itself.¶ In an article discussing Vergès’ strategy of rupture, Emilios Christodoulidis takes up a question posed to Vergès by Foucault shortly after the publication of Vergès’ book, De La Stratégie Judiciare, as to wh ether the defence of rupture in the context of criminal law trials in the colony could be generalised more widely, or whether it was “not in fact caught up in a specific historical conjuncture.” 28 In exploring how the strategy of rupture could inform practices and theory outside of the courtroom, Christodoulidis characterises the strategy of rupture as one mode of immanent critique. As individuals and communities subjected to the force of law, the law itself becomes the object of critique, the object that ne eds to be taken apart in order to expose its violence. To quote from Christodoulidis:¶ Immanent critique aims to generate within these institutional frameworks contradictions that are inevitable (they can neither be displaced nor ignored), compelling (they necessitate action) and transformative in that (unlike internal critique) the overcoming of the contradiction does not restore, but transcends, the ‘disturbed’ framework within which it arose. It pushes it to go beyond its confines and in the process, fam ously in Marx’s words, ‘enables the world to clarify its consciousness in waking it from its dream about itself’. 29¶ Christodoulidis explores how the strategy of rupture can be utilised as an intellectual resource for critical legal theory and more broadl y, as a point of departure for political strategies that could cause a crisis for globalised capital. Strategies of rupture are particularly crucial when considering a system, he notes, that has been so successful at appropriating, ingesting and making its own, political aspirations (such as freedom, to take one example) that have also been used to disrupt its most violent and exploitative tendencies. Here Christodoulidis departs from the question of colonialism to focus on the operation of capitalism in po st - war European states. It is also this bifurcation that I want to question, and rather than a distinction between colonialism and capitalism, to consider how the colonial (as a set of economic and political relations that rely on ideologies of racial diff erence, and civilisational discourses that emerged during the period of European colonialism) is continually re - written and re - instantiated through a globalised capitalism. As I elaborate in the discussion of the Salwa Judum judgment below, it is the combi nation of violent state repression of political dissent that finds its origins (in the legal form it takes) during the colonial era, and capitalist development imperatives that implicate local and global mining corporations in the dispossession of tribal p eoples that constitutes the legal - political conflict at issue.¶ After the Trial: From Defence to Judgment¶ In response to a question from Jean Lapeyrie (a member o f the Action Committee for Prison - Justice) during a discussion of De La Stratégie Judiciare published as the Preface to the second edition, Vergès remarks that there are actually effective judges, but that they are effective when forgetting the essence of what it is to be a judge. 31 The strategy of rupture is a tactic utilised to subvert the order and structure of a trial; to re - define the very terms upon which the trial is premised. On this view, the judge, charged with the obligation to uphold the rule o f law is of course by definition not able to do anything but sustain an unjust political order.¶ In the film Terror’s Advocate , one is left to wonder about the specificities of the judicial responses to the strategy deployed by Vergès. (Djamila Bouhired , for instance, was sentenced to death, but as a result of a worldwide media campaign was released from prison in 1962). While I would argue that the judicial response is clearly not what is at stake in the ruptural defence, I want to consider the potentia lity of the judgment to be ruptural in the sense articulat ed by Christodoulidis, discussed above. Exposing a law to its own contradictions and violence, revealing the ways in which a law or policy contradicts and violates rights to basic political freedoms , has clear political - legal effects and consequences. Is it possible for members of the judiciary to expose contradictions in the legal order itself, thereby transforming it? Would the redefinition, for instance, of constitutional provisions guaranteeing r ights that come into conflict with capitalist development imperatives constitute such a rupture? In my view, the re - definition of the limitations on the guarantees of individual and group freedom that are inevitably and invariably utilised to justify state repression of rights in favour of capitalist development imperatives, security, or colonial settlement have the potential to contribute to the re - creation of political orders that could be more just and democratic.¶ We may be reluctant to ever claim a ju dgment as ruptural out of fear that it would contaminate the radical nature of this form of immanent critique. Is to describe a judgment as ruptural to belie the impossibility of justice, the aporia that confronts every moment of judicial decision - making? I want to suggest that it is impossible to maintain such a pure position in relation to law, particularly given its capacity (analogous to that of capital itself) for reinvention. Thus, I want to explore the potential for judges to subvert state violence e ngendered by particular forms of political and economic dispossession, through the act of judgment. In my view, basic rights protected by constitutional guarantees (as in the Indian case) have been so compromised in the interests of big business and develo pment imperatives, that re - defining rights to equality, dignity and security of person, and subverting the interests of the state - corporate nexus is potentially ruptural, in the sense of causing a crisis for discrete tentacles of global capitalism.¶ At th is juncture, we may want to explicitly account for the specific differences between criminal defence cases and Vergès‘ basic tactic, which is to challenge the very jurisdiction of the court to adjudicate, to define the act of resistance as a criminal one, and constitutional challenges to the violation of rights in cases such as Salwa Judum . While one tactic seeks to render the illegitimacy of the colonial state bare in its confrontation with anti - colonial resistance, the other is a tactic used to re - define the terms upon which political dissent and resistance take place within the constitutional bounds of the post - colonial state. These two strategies appear to be each other’s opposite; one challenges the legitimacy of the state itself through refusing the ju risdiction of the court to criminalise freedom fighters, while the other calls on the judiciary to hold the state to account for criminalising and violating the rights of its citizens to engage in political acts of dissent and resistance. However, the common thread that situates these strategies within a singular political framework is the fundamental challenge they pose to the state’s monopoly over defining the terms upon which anti - colonial and anti - capitalist political action takes place. ¶ Here I will turn to consider a post - colonial context in which the colonial is continually being re - written, juridically speaking, in light of neo - liberal economic imperatives unleashed from the late 1980s onwards. A recent judgment of the Indian Supreme Court provide s an opportunity to consider a moment in which capitalist development imperatives and the exploitation of tribal peoples by the state of Chattisgarh are put on trial by a group of three plaintiffs. The judgment provides, amongst other things, an opportunit y to consider the strategy of the plaintiffs and also the judicial response. As I argue below, this judgment presents an instance of rupture precisely because the fundamental freedoms of the people of Chattisgarh are redefined by the Court in such a way as to challenge and condemn the capitalist development imperatives that have put their lives and livelihoods at risk.¶ Salwa Judum¶ The Indian Supreme Court rendered judgment in the case of Nandini Sundar and others v the State of Chhattisgarh on July 5th, 2011. In this case, Sundar, a professor of Sociology at the Delhi University, along with Ramachandra Guha, an eminent Indian historian, and Mr. E.A.S. Sarma, former Secretary to Government of India and former Commissioner, Tribal Welfare, Government of And hra Pradesh, petitioned the Supreme Court of India alleging, inter alia , that widespread violations of human rights were occurring in the State of Chattisgarh, on account of the ongoing Naxalite/Maoist insurgency and the counter - insurgency activities of th e State government and the Union of India (or the national government). More specifically, the petitioners alleged that the State was in violation of Articles 14 and 21 of the Indian Constitution. Article 14 guarantees equality before the law of each citiz en and freedom from discrimination on the basis of race, religion, caste, sex or place of birth. Article 21 of the Constitution guarantees the protection of life and personal liberty.¶ While a comprehensive overview of the Naxalbari movement is beyond the scope of this article, I provide a very brief description of the movement here, by way of explaining the political and legal background of the judgment. The Naxalites are revolutionary communists (Maoists) who split from the Communist Party of India short ly after independence. The movement includes a social base comprised of “landless, small peasants with marginal landholdings,” and adivasis. 32 Bhatia notes that in the state of Bihar, many people join the movement in order to pursue short - term goals, such as better education, food and housing, and employment, with revolution a distant concept if not altogether foreign to more immediate objectives of radical change. 33 Regardless of whether revolution is the immediate or long - term objective of members of the N axalite movement, it is clear that along with economic and social rights lies the desire for freedom from violence and fear in a political context described by some as semi - feudal. One young Naxalite described the hangover of feudal attitudes towards lowe r castes by stating “the landlord’s moustache has got burnt but the twirl still remains.” 34¶ With a powerful and unrelenting presence in tribal areas, arguably amongst the most impoverished parts of the country, Naxalites have engaged in nonviolent and dir ect armed action against state and national governments intent on pursuing capitalist modes of development at the expense of the poor, throughout nine different states in India. Specifically, the Naxals have focused on land rights, minimum wages for labour ers, common property resources and housing rights. 35 The strategy of armed resistance has met with criticism across the political spectrum 36 , and it is difficult to gauge the level of support for the Naxalites amongst left and progressive communities in Indi a. However, the ascription by India’s Prime Minister Manmohan Singh to the Naxals as the “singlest greatest threat to India’s national security” 37 was the precursor to a vicious campaign of repression called Operation Greenhunt that has attracted criticism by political progressives.¶ This is the background to the petition brought by Sunder, Guha and Sarma. The petition alleged, inter - alia, the widespread violation of human rights of people of Dantewada District and neighboring areas in Chattisgarh. Specifica lly, the petitioners alleged that the State of Chattisgargh was supporting the activities of an armed vigilante group called ‘Salwa Judum’ (‘Purification Hunt’ in the Gondi language). The State was actively promoting the Salwa Judum through the appointment of Special Police Officers. The government of Chattisgargh, along with the Union of India government, was alleged to have employed thousands of ‘special police officers’ as a part of their counter - insurgency strategies. The SPOs, a category that finds its origins in colonial policing legislation 38 , are members of the tribal communities, and are often minors. The SPOs, as the Court notes, are armed by the State and given little or no training, to fight the battles against the Naxalites. At the time the Court passed down its judgment, 6500 tribal youth have been conscripted into the Salwa Judum (para 44). He writes that the “wholesale militarisation of the movement since the 1990s has culminated in a vanguard war trapped in an expanding culture of counterinsur gency.” 3¶ The State of Chattisgargh recruits SPOs (also known as Koya Commandos) under the provisions of the Chattisgargh Police Act 2007. Under this Act, the SPOs, as the Court notes, “enjoy the ‘same powers, privileges and perform same duties as coordinate constabulary and subordinate of the Chattisgargh Police.” 40 The Union Government of India sets the limit of the number of SPOs that each state can appoint for the purposes of reimbursement of an honorarium under the Security Rated Expenditure Scheme. The State argued on its behalf that the SPOs receive two months of training covering such things as the use of arms, community policing, UAC and Yoga training, and the use of scientific and forensic aids in policing. 41 The Union Government argued that the SPOs “have played a useful role in the collection of intelligence, protection of local inhabitants and ensuring security of property in d isturbed areas.” 42 Despite these attempts at a defence, the Court found in favour of the petitioners.¶ The Court contrasts the provisions of the 2007 Act that provide for the conditions under which the Superintendant of Police may appoint “any person” as an SPO with the parallel provisions in the British era legislation. They find that the 2007 Act, unlike its predecessor, fails to delimit the circumstances under which such appointments can be made. The circumstances however, do include “terrorist/extremist” incidents, and the Court thus finds that the SPOs are “intended to be appointed with the responsibilities of engaging in counter - insurgency activities.” 43 The Court agrees with the allegations of the petitioners, that thousands of tribal youth are being ap pointed by both the State and Union governments to engage in armed conflict with the Naxalites, and that this placing the lives of tribal youth in “grave danger.” 44 Given that youth being conscripted have very low levels of education and are often illiterat e, and that they themselves have likely been the victims of state and Naxal violence, the Court found that they could not “under any conditions of reasonableness” assume that the youth are exercising the requisite degree of free will and volition in relati on to their comprehension of the conditions of counter - insurgency and the consequences of their actions, and thus, were not viewed by the court as freely deciding to join the police force as SPOs. 45 After a very thorough analysis of the conditions under whi ch tribal youths become SPOs and the use and abuse of the SPOs by the State, the Court found the State of Chattisgarh to be in violation of Articles 14 and 21 of the Constitution by appointing tribal youth as SPOs engaged in counter - insurgency.¶ The Court ’s findings in relation to the SPOs are remarkable insofar as they account for the socio - economic conditions and lived realities of the tribal youth. In their judgment, however, they go much further than engaging a contextualised and nuanced approach to the interpretation of the rights to equality, life and personal liberty. They enquire into the causes of Naxalite violence, and in doing so, hold capitalist development imperatives to account; the constitutional rights of tribals and others dispossessed of t heir lands and livelihoods are being violated in the interests of capital. Drawing on academic work critical of globalisation, the Court quotes the following:¶ ‘[T]he persistence of “Naxalism ”, the Maoist revolutionary politics, in India after over six decades of parliamentary politics is a visible paradox in a democratic “socialist” India.... India has come into the twenty - first century with a decade of departure from the Nehruvian socialism to a free - market, rapidly globalizing economy, which has created new dynamics (and pockets) of deprivation along with economic growth. Thus the same set of issues, particularly those related to land, continue to fuel protest politics, violent agitator pol itics, as well as armed rebellion....’ 46¶ The Court recognises that the capitalist development imperatives of the state are the cause of the armed resistance when they state that the problem lies not with the people of Chattisgarh, nor those who question th e conditions under which the conflict has been produced, but “[t]he problem rests in the amoral political economy that the State endorses, and the resultant revolutionary politics that it unnecessarily spawns.” 47 Quoting from a report written by an expert g roup appointed by the Planning Commission of India, the Court takes note of the “irreparable damage” caused to marginalised communities by the development paradigm adopted by the national governmen t since independence . 48 The economic development pursued has “inevitably caused the displacement” of these communities and “reduced them to a sub - human existence”. 49 The Expert Group also noted their surprise at the refusal of the State to recognise the reasons for the political dissent expressed by the Naxalites, a nd the disruption of law and order. The Court adopts this observation, and notes that:¶ Rather than heeding such advice [to address the dehumanisation wreaked by capitalist development policies], which echoes the wisdom of our Constitution, what we have wi tnessed in the instant proceedings have been repeated assertions of inevitability [sic] of muscular and violent statecraft. 50¶ Following this remarkable assertion of Constitutional values that are opposed to the state violence used to repress political dis sent, the Court accounts for the violence rendered by capitalist development imperatives:¶ The culture of unrestrained selfishness and greed spawned by modern neo - liberal economic ideology, and the false promises of ever increasing spirals of consumption l eading to economic growth that will lift everyone, under - gird this socially, politically and economically unsustainable set of circumstances in India in general, and Chattisgarh in particular.” 51¶ The exploitation of natural resources violate principles t hat are “fundamental to governance” and this violation eviscerates the promise of equality before the law, and dignit y of life (Article 21) . 52 Capitalist development imperatives and neo - liberalism “necessarily tarnish” and “violate in a primordial sense” Ar ticles 14 and 21 of th e Indian Constitution . 53 The Court thus positions the rights to equality and dignity in opposition to capitalist development imperatives, and most significantly, do not find that the violation can be justifiably limited. Economic polic ies that violate the spirit of the Constitution, and run counter to the “primary task of the state” which is to provide security for all of its citizens “without violating human dignity” cause levels of social unrest that ultimately amount to an “abdicatio n of constitutional r esponsibilities” . 54 In their finding that neo - liberal ideology amongst other economic policies are the root causes of the social unrest and Naxal militancy, the Court re - values the constitutional and human rights of its citizens and as serts a radically different vision of the role of the state in promoting and protecting democracy. Based on the spirit of the Constitution as enacted at the time of independence, the Court clearly puts forth a view that the conditions for democracy begin w ith state protection and enhancement of human dignity and equality, education, and freedom from violence, rights and values that are contrary to the capitalist economic policies embraced by the State of Chattisgarh.¶ Constitutional rights claims, whether we are looking at state of the art constitutions in Canada, South Africa or elsewhere, do not often go beyond a liberal conception of rights. And indeed, utilising human rights as a means of provoking political ruptures (as opposed to ameliorating existin g conditions) surely seems like a rather bankrupt endeavor, in light of how rights to freedom and liberty have been effectively co - opted by market imperatives. 55 The ISC judgment thus seems all the more compelling, in its condemnation of developmental terro rism, and capitalist greed. The judgment finds in favour of the petitioners. In doing so, they explicitly critique the capitalist model of development that has impoverished so many millions of people. They express the view that people do not rise up in arm ed insurgency against the state without cause, and find the failure of the State to affirmatively fulfill its obligation to protect the life and liberty of the SPOs is a breach and violation of the Constitution. They find, significantly, that the very econ omic policies pursued by the government, coupled with the treatment of tribals as nothing more than cannon fodder in the war against the Naxalites, have dehumanised those most vulnerable t o poverty. The Court adopts the words of Joseph Conrad in their cond emnation of the impoverishment and exploitation of the tribals by both the state and union governments. Drawing parallels with Conrad’s characterisation of the colonial exploitation of the Congo in the late 19th and early 20th centuries, the Court relates the “vilest scramble for loot that ever disfigured the history of human conscience” to the “scouring of the earth by the unquenchable thirst for natural resources by imperialist powers”. 56¶ The Court also alludes to the virulent auto - immune reaction that e xists like a germ, waiting to explode, amongst the tribal youths. With no established mechanism for getting the arms back from the tribal youths, the Court predicts the possibility of these youths becoming “roving groups of armed men endangering the societ y, and the people in those areas as a third front.” They write that it “entirely conceivable that those youngsters refuse to return the arms Consequently, we would then have a large number of armed youngsters, running scared for their lives, and in violati on of the law. It is entirely conceivable that they would then turn against the State, or at least defend themselves using those firearms, against the security forces themselves; for their livelihoo d, and subsistence...” 57¶ In finding the government responsible for the socio - economic conditions that have led to revolutionary activity, and in condemning their brutal and inhumane use of tribal youth in the armed struggle against the Naxalites, (caused, in the view of the Court, by policies of privatisation tha t leave the state ideologically and actually incapable of dealing with the social unrest) the Court engages in an immanent critique of the political ideology and legal policies of the government**.** In critiquing the violence of capitalist development imperat ives pursued by the state, and the inhumane violence utilised by the state to counter its natural consequences (armed unrest), the Court re - invests concepts of liberty, life, and equality with political meaning that goes beyond their usual liberal interpel lations. The concept of security is reinterpreted with the interests of the poor in mind, the market logic of efficiency condemned as a guiding principle and objective of government policy.¶ Conclusion¶ Outside of a criminal or military law context, a strategy of rupture might involve an exposure of the contradictions that inhere in colonial, capitalist legal orders that eviscerate the potentiality that rights hold to enable ind ividuals to live lives free of fear, violence and exploitation. In considering how this rupture might occur through the act of judgment, it may be through challenging the authority of the state to engage its citizens in ways that violate political and ethi cal norms of freedom. In the judgment analysed here, the Court seizes the power to define the constitutional norms and crucially, the meaning of the rights to life, personal liberty and security. They engage an act of radical re - definition of democratic ri ghts with the lived conditions of the poorest communities at the forefront of their analysis.¶ In this judgment the Indian Supreme Court redefines the imperatives of security as a State obligation to its citizens, to “secure for our citizens conditions of social, economic, and political justice for a ll who live in India...” . 58 Without this, the Court notes that the State will not have achieved human dignity for its citizens. This, for the court, is an essential truth, and “policies which cause vast disaffectio n amongst the poor” not only exist in opposition to this truth but are also “necessarily destructive of national unity and integration” . 59 The Court thus identifies Indian democracy as what is at stake in the revaluing and reinterpretation of rights to life and security of the person.¶ In directing their analysis at the ways in which neo - liberal capitalism as a political and economic rationality “has launched a frontal assault on the fundaments of liberal democracy, displacing its basic principles of consti tutionalism, legal equality, political and civil liberty, political autonomy, and universal inclusion with market criteria...”, 60 the ISC attempts to recuperate the deracinated vision of democracy that Indian corporateers and government ministers appear to ha ve in mind. Surely, in a time when even the most basic conditions for a democracy that attends to the political, social and economic needs of the common, those with basic common needs of education, freedom of association and movement, freedom from deprivat ion and dispossession, are absent, charting such legal terrain opens a space for political rupture.¶ In considering whether legal judgments can be ruptural in the sense elucidated by Christodoulidis, and reflecting on Sundar et al , it is clear that an ind ependent judiciary does have the power to disturb the monopoly of violence exercised by the government, and to transcend this disturbed framework by offering a radically different interpretation of security and freedom.

Security as the insurance of egoism reflects a Benthamite definition of law’s raison d’être as nothing other than the security of private property. The law exists in order to provide security for the property - owning classes, security for their actual wealth and also feelings of security; the law provides freedom from the fear of loss. In moving far from Benthamite concerns with the protection of private property, the Court redefines security, a concept fundamental to law’s being, and more particularly, a concept too often used and abused in t he interests of private corpora tions . ¶ Although this use of the law does not refuse the authority of the court in the way that Vergès’ strategy of rupture did in the colonial - criminal law context, it most certainly redefines the ambit of what is an intel ligible rights claim. By bringing the socio - economic conditions of the adivasis and tribal peoples to the forefront of their interpretations of the rights at issue , the Court opens the space for a legal consciousness that can no longer remain caught up in a fantasy about it’s own effectiveness in actually protecting the rights of the poorest and most vulnerable**.** This movement by the Indian Supreme Court charts an av enue that holds promise for the anti - colonial struggles of legal advocates elsewhere.

#### Apocalyptic warming reps are awesome

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A climate “swerve”? Hope is hard to maintain among those who seriously engage climate change. The actualities are daunting and preventive actions have been feeble. People sometimes ask me, a psychiatrist, how to address this debilitating hopelessness. I have no psychiatric magic to offer but I believe that there are certain significant directions of possibility. The first thing to note is that something important is happening in relationship to climate awareness. In general, we are quite ignorant about how large changes in consciousness come about. The subject has always been elusive and is rendered more so by the information revolution in our time. Still, we may well be entering a significant “swerve” in climate change consciousness. That word was used by the first century BCE Roman poet and philosopher Lucretius to describe unpredictable and unexpected movement of matter and has recently been appropriated by the humanist Stephen Greenblatt to describe an equally unpredictable historical shift, notably the emergence of modernity as influenced by Lucretius himself. We came close to such a swerve in nuclear weapons consciousness during the early 1980s. I could witness some of that shift as a participant in the physicians’ antinuclear movement. This medical effort shared a certain continuity with the earlier physicists’ movement in making use of scientific evidence and projections from that evidence to bring about a change in public awareness of the weapons and their dangers. Indeed, I was working in Hiroshima in 1962 when I first read about the early expression of this movement: doctors in Boston projecting the details of destruction, and the absence of functional medical facilities, that would result from the dropping of a 5-megaton nuclear weapon at a particular point, Watertown Square, in their city. As the movement became international, our message was the same for other cities in the Western hemisphere, Europe, and other parts of the world. I mention this not to claim that nuclear danger has been eliminated—far from it—though it is possible that the change in consciousness helped prevent the use of the weapons. My point here is that dramatic shifts in consciousness of catastrophic danger, now more than ever, can occur suddenly and unexpectedly. Scientists have already done much to facilitate such a change. Consider the imaginative achievement of bringing about a movement on the basis of mathematics: the 350.org organization, under the leadership of Bill McKibben, emerging from the findings of climate scientist James Hansen to the effect that such a number was a danger point in terms of particles of carbon per million in the atmosphere. To be sure, climate change doesn’t readily produce images equivalent to those that physicists and physicians could call forth in connection with nuclear destruction. But we are beginning to get a glimmer of powerful climate images: areas near or below sea level (Bangladesh, Pacific Islands) inundated by water and nearly going under; and closer-to-home pictures of Alaskan villagers, America’s first climate refugees; New Orleans; a flooded New York subway system; and severe damage to the US Northeast Atlantic coastline from Hurricane Sandy. More than that, we have the impression of climate stories appearing every day, whether about floods in England, droughts in California, severe storms in the American Midwest, or typhoons in the Philippines. Whatever the uncertainty about cause and effect, and the obfuscation on the part of deniers, these events are having a profound impact on our psyches. Indeed, we do well to recognize a quantum leap of fearful awareness of climate change. Suppressed nuclear fear can contribute to this sense of catastrophic danger. And the awareness can only increase for one irrefutable reason: Climate change, more than any other issue, is all-encompassing. Even more than nuclear weapons, climate danger envelops our entire planet. No person or group can be free of it. Pragmatic institutions, such as the military and insurance companies, have been longtime students of climate change. And large corporations, such as Coca Cola, have realized how much their business can be threatened by it. Even those who have most vehemently, and harmfully, denied climate change, and financed others to do so, have to be fearful of precisely what they have denied. The oil conglomerates have been slowing down in their contributions to denial and worrying about how they themselves will be affected. A world whose atmosphere has been poisoned by carbon means bad business—even for ExxonMobil. Of course this climate change swerve in no way eliminates the formidable political, psychological, and technical issues that confront us. But it could help us to mobilize our intellectual capacities and moral passions on behalf of our threatened habitat. In doing so we would be giving new expression to the notable human capacity for resilience and adaption and could thereby experience a sense of hope, in ourselves and for our species.