# 1AC

## 1AC — Shipping (KU HW, Two Step)

### 1AC — Mega Ships

#### The Advantage is Mega Ships —

#### The international shipping industry is immune from antitrust suits

O’Shea 17, an attorney who works on transportation and infrastructure issues, (Sean, October 3, 2017, Congress Must Stop Foreign Ocean Carriers From Harming U.S. Economy, https://morningconsult.com/opinions/congress-must-stop-foreign-ocean-carriers-from-harming-u-s-economy/)

Currently, U.S. ports and shippers are exposed to foreign ocean carrier cartels that band together to protect their financial interests while squashing port profits and stifling competition. Over the past several years, these ocean carriers have largely consolidated into three alliances that represent such a large share of the market that they can threaten to steer substantial amounts of cargo away from U.S. ports that balk at fees the alliance offers. Under normal circumstances, the whole scheme likely would run afoul of the Sherman Anti-Trust Act, which Congress adopted at the end of the 19th century in response to oil, steel and sugar trusts that attempted this same kind of market manipulation. But in the Shipping Act of 1916, Congress created an exemption from antitrust laws for alliances approved by the Federal Maritime Commission. When Congress revisited the law in 1984, it added a provision that allows a carrier alliance to go into effect automatically, providing antitrust immunity to its member lines, unless the FMC obtains a court injunction within 45 days. Even then, the only acceptable grounds for issuing an injunction are when a proposed alliance will impair shippers. The court cannot consider the potential harm to ports, dock workers or other waterfront service providers. The law further says that only the FMC, and not the Department of Justice, may file such lawsuits, and private parties are expressly barred from intervening in any case the FMC does bring. This special treatment in the current law gives foreign containership lines a virtual antitrust immunity when dealing with U.S. marine terminals, stevedores, tug and towing companies, and other equipment and service providers. This has created an environment in which U.S. laws favor the interests of big foreign vessel operators at the expense of American port terminal companies, shippers and workers. Today, exactly zero U.S. ship owners participate in the three ocean carrier alliances recognized by the FMC. This means our laws now do more to shield foreign carriers from being sued for antitrust violations than it does to promote the domestic shipping industry.

#### The container shipping industry is increasing use of mega ships driving out those who want to operate smaller ships

Murray 16, Midshipman in United States Merchant Marine Academy, (William, “Economies of Scale in Container Ship Costs” https://www.usmma.edu/sites/usmma.dot.gov/files/docs/CMA%20Paper%20Murray%201%20%282%29.pdf)

On the extreme end of this increase in ship size is the development of mega container ships. These ships, capable of carrying 10000 TEU or more, have become a facet of the container shipping industry. While there are undeniably more ships on the low capacity end of the spectrum than on the high capacity end, mega ships are being built a staggering rate. In 2014 there were 196 vessels over 10000 TEU, with 66 of those being larger than 13300 TEU. In 2015, there were 265 ships over 10000 TEU, with 96 larger than 13300 TEU. This represents a 35% increase in the number of vessels over 10000 TEU, and a 45% increase in those greater than 13300 TEU. Ultra large container ships are undoubtedly in vogue. It is not difficult to determine why ship owners are building more ships; it is in response to the demand for containerized freight. To meet this demand, more capacity must be available. This can only be accomplished by either building more ships or by increasing the size of those already built. While some owners have undertaken jumboizations in order to increase existing vessels’ capacities, the majority prefer to build new ships. In efforts to capture as large a market share as possible, these ships are built to carry as many containers as possible. Competing carriers have few ways to differentiate themselves. While on time performance and customer service are important, there is a distinct lowest cost advantage. That carrier which can offer the lowest freight rates is better positioned than its competitors. Ship owners believe that these mega ships offer a cost advantage, although it is worth noting that the costs associated with these vessels are vast. Owners must weigh the costs of these larger ships against the potential economic benefits they offer.

#### The acquisition and use of megaships are anticompetitive practices that drive out smaller ships

Veitch 16, Head of Policy for the Global Shipping Foundation, (Alex, Nov 2016, Report by Global Shipping Foundation, “The Implications of Mega-Ships and Alliances for Competition and Total Supply Chain Efficiency: An Economic Perspective”, <https://paperzz.com/doc/9427398/the-implications-of-mega-ships-and-alliances-for-competit>...)

The container shipping Market is undergoing considerable change. The development of the mega ship has had a profound impact. They have led to the creation of new strategic Global alliances and quickened the pace of consolidation in the industry. This paper analyzes the impacts for shippers, the customers of container ship operators, and in particular the Wider supply chain implications of Mega ships and the potential impact on competition between competitors and their shipper customers. This paper comes in two parts: the first provides an economic assessment of megaships, alliances and consolidation of the container ship industry; the second part, in the form of an Annex (Annex 1) takes a competition policy analysis of megaships, strategic alliances in the impacts of consolidation in the industry. the paper draws on various detailed studies and sources, including the recent Organization for Economic Cooperation and Development (OECD) International Transport Forum report on Mega ships and the oecd competition committee report on competition issues in liner shipping , but it also provides its own independent economic and competition assessments. The following key findings, conclusions, and recommendations for carriers, regulators and competition authorities, and shippers are summarized below. Economic Issues: Mega ships and the associated commercial practices of strategic alliances and mergers are driving consolidation in the container shipping sector. This is harmful to shippers because megaships and strategic alliances reduce supply chain efficiency and rivalry unimportant parameters of competition, including capacity, sailing frequency, de transit times, ports of call and Associated service quality. The higher economies of scale associated with megaships mean that fewer ships can operate in a market of a given size. Higher barriers-to-entry are likely to reinforce the trend towards fewer independent operators, with smaller operators being driven out of the major trades into niche markets faced with a trend towards consolidation and cooperation due to Mega vessels. It is unlikely competition problems associated with consolidation and megaships will be solved by new entrance into liner shipping. The report asks whether the time is right to question the received wisdom that shipping alliances and Consortium are preferable to consolidation between carriers because Shipping Lines operating common capacity cannot compete amongst themselves with regards to the Consortium has agreed capacity, sailing frequency, transit times, ports of call and Associated service quality.

#### The size of those megaships are about to explode, drastically shaking up the entire industry

Fickling 21, Reporter for The Print. (David, March 30, 2021, Get ready for future, giant next-gen cargo vessels will make ‘Ever Given’ look like bath toy, <https://theprint.in/opinion/get-ready-for-future-giant-next-gen-cargo-vessels-will-make-ever-given-look-like-bath-toy/630839/>)

If you think the ultimate reason the Suez Canal got blocked last week is because container ships are getting too big, get ready for the future. The next few generations of cargo vessels are going to make the Ever Given look like a bath toy. Big enough to carry 20,124 twenty-foot equivalent units, or TEUs — the standard measure for cargo, representing a single shipping container — the Ever Given was one of the world’s largest such vessels when it was launched in 2018. The first container ship to break the 20,000 TEU mark had been at sea for less than a year. One famed 1999 study, written at a time when the largest boats carried less than 8,000 TEUs, argued it would prove impossible to build craft bigger than 18,000 TEUs. The Ever Given, finally floating on its way again, is now distinctly in the second class of mega freighters. There are nearly 100 ships carrying more than 20,000 TEUs on the seas or under construction, and the bigger vessels being assembled in Chinese and South Korean shipyards are mostly around the 24,000 TEU mark. A quarter of the capacity moved by the world’s largest container line, AP Moller-Maersk A/S, is on boats above the 17,500 TEU mark. That’s unlikely to be the end of it. Chinese shipyard Hudong-Zhonghua Shipbuilding Group Co. has already registered designs for a 25,000 TEU vessel, and it has become relatively commonplace to predict that 30,000 TEU monsters will be plowing the oceans before the decade is out. Such enormous hulls may cause problems that will put the Ever Given’s mishap into the shade. At Rotterdam, the largest ships already have to arrive at high tide to ensure there’s enough clearance for them to get through the channel, according to a 2019 study by Nam Kyu Park of South Korea’s Tongmyong University. Larger vessels will soon be unable to berth at Shanghai, Busan and Hong Kong even at high tide, unless channels are dredged out further, Park wrote. There are similar problems with infrastructure on dry land. Modern ports are astonishingly efficient at unloading, and can turn around a fully laden 20,000 TEU vessel in a couple of days. But the time spent waiting for a berth can cut deep into the wafer-thin economics of a container line. Longer quays may have to be built to accommodate the larger ships, as well as cranes that can reach across wider decks, larger loading yards for tens of thousands of containers, and faster rail and road terminals to take cargo to its next destination. Current vessels are already at the limits of what can fit along major shipping lanes. The Ever Given is too bulky to squeeze through the Panama Canal, where boats must be lifted over its mountainous spine with massive lock gates. At 24 meters (79 feet) deep, the Suez Canal has more capacity — but it’s roughly as deep as the Straits of Malacca and Singapore, so dredging it further to accommodate bigger ships won’t help much. The binding constraint on East-West trade at this point isn’t engineering, but geology. Extending 15.7 meters below the water line, the Ever Given shouldn’t, on paper, have trouble making it through any of those channels, which typically require 3.5 meters of clearance from the bottom. Next-generation ships with a 20-meter draught, on the other hand, would be at constant risk of grounding. How have container ships managed to defy expectations that their size would hit fundamental limits? A large part of it is because the economies of scale are so compelling. Bigger vessels use more fuel, but relative to the number of boxes stacked on their decks they’re far more efficient. They can also turn around a larger number of containers at a time and serve a wider array of feeder ports, ensuring they can defray their massive capital costs quicker. There’s little sign that this is about to change. New International Maritime Organization regulations against the burning of sulfur-intensive fuel oil introduced last year mean current ships are using costlier diesel, putting more pressure on naval architects to come up with yet more efficient designs. Beyond that, the IMO now has plans to reduce carbon dioxide emissions by 40% in 2030 compared with 2008, and by 70% by 2050. Even with a switch to cheaper, less polluting liquefied natural gas as the main fuel, that’s going to mean further drastic improvements in efficiency, not to mention propulsion technologies that don’t exist yet. To date, the best way to chip away at fuel consumption and emissions is by increasing size. It’s hard to know how the industry is going to cope with this. Perhaps Suez, Malacca and Singapore can be dredged to accommodate even bigger vessels. Perhaps shipyards will find ways to squeeze a few more inches out of existing channels. If not, alternative routes around the Cape of Good Hope and through the deeper Straits of Sunda and Lombok between Indonesia’s islands may prove the only viable way to accommodate such massive boats. Should that happen, those economies of scale will have to be drastically larger to make up for the longer sailing time. We’ve seen container ships leap from 10,000 TEUs to 24,000 TEUs. Don’t be shocked to see 50,000 TEU vessels plying the sea in your lifetime.

#### Scenario 1 is Port Expansion —

#### That forces massive, unwanted port expansions that ensures constant environmental destruction around the world

Nasir & Saghatchian 21, Department of Mechanics and Maritime Sciences Division for Maritime Studies CHALMERS UNIVERSITY OF TECHNOLOGY (Hamzaand Farbod, Limitation of mega ships in the container shipping industry , https://odr.chalmers.se/bitstream/20.500.12380/302648/1/Grupp%2046%20-%20Nasir%20%26%20Saghatchian%20-%20Limitation%20of%20mega%20ships%20in%20the%20container%20shipping%20industry.pdf)

According to (Baik, 2017), mega ships can impact the port infrastructure in many ways. As a brief example: The berth of a port determines what vessels can dock, larger vessels require larger berths and quays to support the length, weight, and height of the vessels. Large vessels also require larger gantry cranes to support the loading and unloading of cargo in large volumes. The cranes are required to be large and therefore are heavy with longer reach but this then requires the piers to be reinforced and expanded in order to support the weight and size. Yap & Loh (2019) informs that all these changes are caused by the size and length of a vessel which goes to show the vast amount of investment that is needed to make the port accessible to mega ships. “The bigger the ship is, the larger the risk is”, larger vessels also add a lot of risk regarding port congestion and can have heavy impacts on the environment if an accident were to occur in the port (Baik, 2017). According to Park & Suh (2019), if in the future a mega container ship with a volume capacity of 30,000 TEU is in operation then ports need to dredge and increase the water depth by more than 20 m and that will have to be the new standard for ports and container terminals.

#### Those port expansions destroy global biodiversity and entire ecosystems — ports are the lynchpin

Chua 21, Charmaine Chua is Assistant Professor of Global Studies at the University of California, Santa Barbara. (Charmaine, The Ever Given and the Monstrosity of Maritime Capitalism, Boston Review, <https://bostonreview.net/class-inequality-politics/charmaine-chua-ever-given-and-monstrosity-maritime-capitalism>)

From Megaships to Megaports These monstrous ships are perhaps most perverse in the way they meet their victims on shore. As more and more megaships lumber through the world’s oceans, more infrastructure is required to cope with mounting cargo on land. When companies such as Evergreen make new megaship orders, they rarely consult with port authorities, rail carriers, or other actors along the supply chain. Terminals originally built to discharge cargo from an earlier era of ship sizes (5,000 TEUs and under) now struggle to handle cargo with capacities five times as large. Shippers used to select ports on the basis of their strategic geographical location (as was the case in the establishment of the port of Aden, Malta, and other colonial entrêpots at key points in imperial trade routes). But ports today increasingly act as substitutes for each other, pawns in a game of commerce that is global in scale. All ports fear being replaced by the quicker, more efficient passage, so they invest heavily in upgrading their fixed infrastructure. Building a megaport is a mammoth task, both financially and spatially. Construction requires empty, flat land and expensive outlays of public finance. Channels must be dredged to make way for a deepwater harbor—not only once, but endlessly, to counter the tides and currents. Cranes must be raised or replaced by larger ones altogether. Dockyards must expand to support the higher volumes of containers. In the hinterland, highways and railroad corridors must support the concentration of cargo entering the city. These infrastructural modifications, made repeatedly as megaships have continued to grow, require the massive dispossession and manipulation of environments and ecologies. As Khalili details, there is something “extravagantly modernist” about shaping the ecologies and geologies of land and sea to suit the circuits of market exchange. The god-like desire to manipulate space, to extract and excavate without regard to geological impediments, reflect what Alfred Sohn-Rethel calls the “absolute historical timelessness and universality” of exchange, according to which “the entire empirical reality . . . by which one moment and locality of time and space is distinguishable from one another is wiped out.” Khalili recalls visiting the port of Khor Fakkan and talking to a British terminal manager. Pointing to a hill in the distance, he said plaintively that he could “move that mountain” if he needed. For him, Khalili reflects, “shaping the land, reclaiming it or flattening it, or whittling away at it, was no matter.” The ecological effects of such human hubris have been devastating. When the Suez Canal joined the Red Sea to the Mediterranean in 1869, marine species migrated along the waterway, allowing invasive species from venomous jellyfish to rabbitfish to make their way north, causing untold damage to biodiverse eco-systems. So significant were these effects that they have been termed “Lessepsian” after the developer of the canal, Ferdinand de Lesseps. As massive infrastructural developments chase giant ships, they destroy entire ecosystems, and ports and canals have come to epitomize the intensification and expansion of capital’s supply lines, cutting gashes across the earth to chase supply chain profits.

#### Port expansions devastate land and other species

American Oceans 21, (What Is Dredging?, <https://www.americanoceans.org/facts/what-is-dredging/>)

Dredging is costly, and according to The Ecosystem Agency, it is damaging to the environment. They believe it can undermine riverbanks as well as bridge and weir foundations. According to the agency, dredging can also result in the loss of breeding grounds for fish, as well as the extinction of some species and the destruction of the habitat of river bank fauna such as otters and water voles. Dredging also has a negative influence on crops in areas where it is used to de-silt rivers that are primarily meant to meet the region’s irrigation demand. Because, in addition to silt, necessary minerals are dredged out, leaving the resulting water and land deficient in nitrates and phosphates. Also, if dredging is done for cleaning purposes, the toxic material to be removed raises the issue of safe disposal. If it is disposed of on land, it will render the land barren, and if it is disposed of in a less important water body, it will affect the living animals in that body of water.

#### Megaships create global pressures for port expansions that enact devastation of environments and indigenous communities in various parts of the world--

Brown 20, a freelance writer and video journalist based in Quito, Ecuador. (Kim, June 8, 2020, ‘I’ll never be ready for this port,’ locals say of Colombia’s proposed project, <https://news.mongabay.com/2020/06/ill-never-be-ready-for-this-port-locals-say-of-colombias-proposed-project/>)

Wilmsmeier says there has been global pressure to develop deepwater ports since 2008, after the shipping industry started building extra-large cargo vessels to account for a boom in trade, forcing ports to adapt and deepen. When the financial crisis hit that same year, trade volume declined, but shipping firms continued to use these new massive vessels that were now half-empty — a trend that continues today, Wilmsmeier says. As Latin America has seen a significant trade shift toward Asia, mainly China, over the past two decades, Colombia, with its port of Buenaventura, is definitely the weakest along South America’s coast, says Wilmsmeier, who is also the former economic affairs officer for the United Nations Economic Commission for Latin America (ECLAC). Neighboring Ecuador and Peru each have one dominant deepwater port on the Pacific, while Chile has two. The answer isn’t to build an entirely new port, he says, but rather to adapt the one at Buenaventura, which only operates at 40% capacity as it is. The only problem with the port is its marine accessibility, and the highway that leads from Buenaventura to the nearest city of Cali, which was never fully converted to a two-lane highway. But otherwise, he says “it’s not a bad port at all.” It would be a lot cheaper to dredge 15 or 16 meters (about 50 feet) into the harbor here, rather than build a new port from nothing. “I have until today not understood why to build a port [in Tribugá], particularly if you have port capacity in an existing port system,” Wilmsmeier says. Catalina Ortiz, a Green Party congresswoman representing the department of Valle del Cauca, where Buenaventura is located, has been an outspoken opponent of the idea of building a new port in Tribugá, in the neighboring department of Chocó. Not only would a new port be expensive, it would also cause massive environmental damage, which in this case isn’t justified since it’s not necessary, Ortiz tells Mongabay. She says she is confident ANLA will never approve the environmental studies for the project. Naranjo says the plan for Tribugá is for it to be the first “green port city,” and that the project will have little environmental impact. The design includes areas for public services, tourist areas, and urban dispatch areas, in addition to the docks. Potential construction plans for Tribugá include docks that run 3.6 km (2.2 mi) long and 15 to 20 m (49-66 ft) deep, according to an Arquimedes presentation. These docks would have the capacity to receive ships carrying up to 200,000 tons, like the Panamax and Post-Panamax class of freight ships, both of which are roughly the length of three football fields and have a draft, or portion of the ship that sits underwater, of 12 to 15 m (39-49 ft). ‘No guarantees for local communities’ While the port is proposed for Tribugá, it is only one town in the wider municipality of Nuquí, which includes eight Afro-Colombian townships and 13 indigenous communities that could also be affected. According to both national and international law, these populations must be consulted prior to any project planned on or near their territory, and have the right to refuse it. Mosquera, who is based in the municipal seat of Nuquí, says neither he nor other authorities from Los Riscales have been consulted about the port yet. He says he can’t support a project that threatens community autonomy and food security. More than 600 families here live from daily fishing or collecting shellfish like the crabs and mussels that reproduce in the roots of the mangroves, he says, which would all be at risk from this massive marine infrastructure project. The region’s nearly 5,000 hectares (12,300 acres) of mangroves are one of its unique features, according to the international marine conservation organization Marviva. These are important ecosystems where fish, invertebrates and reptiles gather to both feed and breed, which also makes them an important sources of marine protein for families in the region. But the potential traffic of massive ships entering and leaving the coast on a daily basis will destroy the mangrove ecosytems and push fish farther out to sea or displace them altogether, making it harder for local families to survive, according to Marviva. View of the town of Nuqui, looking north where the proposed port will be built. Photo by Kimberley J. Brown. The communities have long had their own development and conservation initiatives to maintain this harmonious relationship with the environment they depend on, Mosquera says. This includes practicing responsible fishing, protecting the mangroves, and carrying out small-scale community agriculture, where they plant plantains, yucca or rice for local consumption, he says. But not everyone in the town is against the port construction. The mayor of Nuquí, Yefer Gamboa, says the municipality is split over the project, with many here seeing it as a good opportunity for jobs, infrastructure like schools and hospitals, and connectivity to the rest of the country. According to state data from 2005, 60% of the population of Nuquí don’t have their basic needs met. Problems include lack of access to water, consistent electricity supply and health care. Gamboa says some of these problems are exacerbated by the municipality’s remote location on the coast, surrounded entirely by thick rainforest. No roads connect the municipality to the interior, and the only way in is by small passenger plane to the municipal center of Nuquí, which is expensive for locals, Gamboa says, or some five hours by boat from Buenaventura. Gamboa says he will support the construction of the deepwater port, if that’s what the majority of residents decide they want. But if the community rejects it, he says he expects the government to respect that decision, and work with locals on other development plans that address their ongoing needs. “We have to sit down and develop our own route for development,” Gamboa says, adding the solution doesn’t need to come from Bogotá or commercial sectors in the interior. A local resident named Pablo, a resident of Nuqui who works as an informal guide for tourists who come through the area, cuts through a fresh coconut he found on the beach in Nuqui. Photo by Kimberley J. Brown. Living off conservation One of the ways this is already happening is through ecotourism, which is the second most important part of the local economy, after fishing, says Mayor Gamboa. And it’s growing. Today, up to 10,000 people visit Nuquí per year, according to municipality figures. The vast majority of these visitors arrive between July and November to watch the migration of humpback whales (Megaptera novaeangliae), which migrate every year from the colder waters of southern Chile to Colombia’s Pacific coast to breed, and return the next year to give birth. Guide books call Nuquí one of the best places for whale-watching on the coast, precisely because of the tranquility that stems from its isolation. White sandy beaches line the shores and are virtually empty, while the lush Chocó rainforest reaches right up to the water providing hiking opportunities through narrow jungle trails to natural hot springs and waterfalls. Local tour guides also bring people on excursions to see a variety of fauna, from birds, sharks, dolphins and turtles, to the occasional jaguar sighting. Mosquera says some 40% of the population of Nuquí work in ecotourism, either as guides, cooks or lodge owners. The lodges are for the most part locally owned. A resident of Tribuga, after finishing a town meeting to discuss a new ecotourism project. Photo by Kimberley J. Brown. Kelly Rojas, communications manager with Marviva, says the port project puts these local ecosystems and the ecotourism economy that the communities rely on at risk. Marviva has been working in Nuquí since 2006, predominantly with local communities to develop protected marine areas, responsible fishing practices and markets, ecotourism projects, as well as to document marine species in the area. The organization has been able to identify a wide range of unique marine life in the Gulf of Tribugá, including turtles, piangua cockles (Anadara tuberculosa), humpback whales, sharks, dolphins, a variety of fish, important coral formations, and seven different species of mangroves. Rojas says the vibrations and contamination that would be released by the port activity and ship traffic will destroy local ecosystems and displace marine populations.It would also displace popular breeding grounds of sharks and humpback whales, he says. “[The port] goes against everything they have. You saw that their development is very focused on conservation issues, it is very focused on fisheries, it is very focused on community tourism issues, and these are all things this port construction would directly affect,” Rojas says. Connecting Nuquí to the rest of Colombia Deforestation in the Chocó rainforest is another major concern, as publicly funded highways will have to be built or expanded to connect the port to the rest of the country. Only two highways exist in the department of Chocó, which is otherwise pristine rainforest with little development. These roads connect the departmental capital, Quibdó, to the cities of Medellín and Pereira in respective neighboring departments of Antioquia and Risaralda. But both are single-lane highways that travel through winding mountain paths, and are unfit for large cargo trucks, so would have to be expanded, says Mauricio Cabrera, policy coordinator for mining with WWF. The group is part of a network called Tribugá Alliance made up of environmental organizations, researchers and local community councils that are against the port project. The proposed highway that would connect Nuquí to the interior would leave from Las Animas, some 57 km (35 mi) south of Quibdó on the road to Pereira. So far, some 55 km (34 mi) has been built, but it resembles more of a narrow trail than a road, Cabrera says. These road expansions would be expensive, but the expansion of a highway to Nuquí would also cross through pristine rainforest. The region from the Baudó River to the Pacific coast all the way up to the border with Panama is a known as the Baudó mountain range. It’s considered one of the most biodiverse places on the planet due to its high precipitation, receiving between 9,000 and 10,000 millimeters (354-394 inches) of rain per year, and because it’s completely untouched by human development, Cabrera says. . This area is also home to the indigenous Embera community, already considered in danger of cultural and physical extinction, according to the Constitutional Court, he says. The proposed Las Animas-Nunquí road is meant to cross directly through an Embera reserve, where 18 communities live. “If you build a port through these territories, you’re going against the Constitutional Court, you’re going through a zone of immense biodiversity. It’s a disaster,” Cabrera says. The region is home to endemic plants and wildlife as well as unique migratory species, including several species of birds, says Geovanny Ramirez Moreno, science director with the Pacific Environmental Research Institute (IIAP) in Chocó, part of the Ministry of Environment and Sustainable Development charged with investigating biodiversity and communities in the Chocó rainforest. Any infrastructure development threatens these ecosystems, but the creation of roads also makes it easier for illegal loggers and miners to move deeper into the rainforest and cause even further destruction, he tells Mongabay.

#### The expansion of mega ships produces structural violence on vulnerable populations

Chua 18, Phd Dissertation in Political Science University of Minnesota. (Charmaine, Containing the Ship of State: Managing Mobility in an Age of Logistics, <https://conservancy.umn.edu/bitstream/handle/11299/200214/Chua_umn_0130E_19452.pdf?sequence=1&isAllowed=y>}

“It’s a self-made crisis, really”, says the captain, shaking his head. The more megaships grow, the more megaports must be built to service them. In the fifty years since the world’s first container ship Encounter Bay (1,500+ TEU) set sail from Rotterdam in 1968, container-carrying capacities have increased by 1200%, and in the last ten years alone, by 80%. Megaships of 18,000 TEU and above have come to dominate the shipping industry with a startling rapidity. While the economies of scale provided by larger ships seem obviously beneficial from the perspective of an individual company seeking to lower its costs, this is much less the case for the industry as a whole: as the rush of megaships bloat the global shipping fleet, they exacerbate overcapacity, where the total cargo space available on all the world’s ships far exceeds the trade volumes they would help transport. In addition, ports are frequently confronted with the need to make heavy infrastructural adaptation to support the new peaks in volume that come in ever-larger waves to the container yard. None of these factors seem to deter shipping companies: the race to build the largest ship continues, exacerbating the problem of overcapacity as it does so. In this chapter the question I seek to ask is not primarily a causal one, such as ‘why does the shipping industry seems to be shooting itself in the foot by building bigger and bigger ships?’ Rather, this chapter poses a question more attentive to the spatial scale and scope of dispossession entailed by such large-scale infrastructural expansion: What are the spatial, social, and political effects of the monstrous scale of infrastructural expansion? And what does the scale of these projects tell us about capital’s imperative to expand value accumulation through the construction of a global logistics space? Although providing an account of the logics underpinning ship expansion is part of the chapter’s aim, neither neoclassical theories of a self-adjusting universal market mechanism, nor Marxian theories that focus exclusively on the operations of capital, adequately explain the paradox of megaship overcapacity, where firm-level decisions to capture economies of scale produce industry-wide infrastructural problems that impact the state, displacing the risks of over-expansion onto vulnerable populations. As corporations over-invest in the expansion of their shipping fleet carrying capacities, another form of infrastructural expansion is also demanded in the adaptation of port infrastructures, which are often funded by federal and municipal taxes. This means that while the ownership of the means of circulation are privatized, the risks of over-investment are socialized, and come to be borne by society at large in contested and uneven ways. Rather than follow the neoclassic economic logic that megaship expansions are built on the logic of economies of scale, this chapter suggests that private infrastructure expansion cannot be explained in isolation from broader shifts in the way the logistics economy is organized, and in the way the state participates in facilitating the circulation, production, and consumption of commercial capital. As such, I propose the following argument: Both state and corporate projects to expand the scale of logistics infrastructure are materialized bets on the durability of capital accumulation. As the state-capital nexus seeks to build this durable future, facilitating the expanded reproduction of capital through the growth of global logistics space, these infrastructures become burdens on the public that spatially fix concrete spaces of transit through contested and uneven processes of rescaling and dispossession. As such, it becomes important to understand the expansion of logistical infrastructure not only in terms of the physical system of circulation it enables, but also in terms of the irrational rationalities that these obsessions with monstrous expansion entail. Interrogating the interface between massive expansion of both megaships and megaports, I argue that the material systems of global supply can be understand not only as durable infrastructure - public works that stimulate local and global economic growth - but as unendurable monstrosities that imprint the violence of global circulation onto the lived spaces of populations vulnerable or precarious to the displacements and dispossession that such infrastructural expansion produce in their wake. The co-dependency of one monstrous infrastructure (the megaship) on another (the megaport) unevenly distributes violent political effects beyond the port itself, especially into spaces and populations in the global South who supply the raw materials and cheap labor for such undertakings. In this chapter, I use the term “vulnerable populations” as a way to refer to the diverse working classes, precarious lives, racialized populations, and ordinary people whose spatial and social mobility become subject to the demands of logistical flow. I choose the term to connote a general condition of susceptibility to harm under logistics, not because I wish to avoid specificity, but precisely because this chapter proposes that the interdependence of contemporary capitalist economies extend logistics’ effects beyond specific sectors of the transportation working classes and beyond demarcated geographies. Vulnerable populations do not lack agency. However, they are subject to uneven power relations that are intensified by the networked structure of logistics. In this sense, I think of vulnerability not in existential terms but through a materialist lens, where, following Judith Butler, (2012, 141) I understand vulnerability to be to a large extent “dependent upon the organization of economic and social relationships, the presence or absence of sustaining infrastructures and social and political institutions.” In expanding the networked infrastructures of commerce globally, logistics is an arrangement and mobilization of infrastructural violence that exacerbates and reproduces uneven relations of power.

#### Mega ship driven port expansions are an enactment of colonial violence

Chua 18, Phd Dissertation in Political Science University of Minnesota. (Charmaine, Containing the Ship of State: Managing Mobility in an Age of Logistics, <https://conservancy.umn.edu/bitstream/handle/11299/200214/Chua_umn_0130E_19452.pdf?sequence=1&isAllowed=y>}

In chapter three, I examine how the imperatives for capital to expand its circulatory capacities produce its own irrational rationalities. The increasing demands of just-in-time logistics require fixed forms of infrastructure that are constantly superseded by the demand for ever larger (and thus more efficient) transport systems. In the past decade, container ships have more than doubled in size as shipping carriers have sought to capture economies of scale in transportation, fuel and crew costs. The rise of megaships has placed new demands on global shipping infrastructure, requiring ports to make perpetual and capital-intensive adaptations to their infrastructure, placing heavy demands on logistics labor, and generating a global shipping crisis of overcapacity. As ships keep getting bigger, I examine the effects of this expansion as ports struggle to catch up. This need to expand port capacities has resulted in large-scale experiments with geo-engineering, from reclamation and dredging to island removal. By juxtaposing megaship construction with the destructive processes of infrastructural expansion they demand, I argue that the material systems of global supply should be understood not as durable infrastructure — public works that stimulate local economic development — but as unendurable monstrosities that imprint the colonial violence of global circulation onto the lived spaces of vulnerable urban populations.

#### Megaships independently cause port access disparities and expansions that produce environmental and social dislocations that produce conflict and massively expand land conversion

Iyer 19, Fellow with the ORF Maritime Policy Initiative. She tracks ocean governance policies and international maritime trade sustainability for global development. (Gayathri, Mega-ships in the Indian Ocean: Evaluating the impact and exploring littoral cooperation, https://www.orfonline.org/research/mega-ships-in-the-indian-ocean-evaluating-the-impact-and-exploring-littoral-cooperation-53235/)

The emergence of mega-ships and mega-ports necessitates that governments respond to several traditional and non-traditional maritime security threats and vulnerabilities. Securing maritime supply chains against disruption presents an enormous challenge. The increased size of ships increases the safety, security and rescue concerns at ports proportionally as mega-ships generate larger and more concentrated flows of containers in docks, stores and the hinterland. Mega-ships also increase the concentration of risk in the transit choke points that can have severe global food and energy security implications.[41] While more cargo on ships implies less number of ships, the supply chain becomes less resilient due to the large volume of goods on decreasing number of vessels.[42] The potential threat to international commerce by naval mines makes mega-ships most vulnerable near geographical bottlenecks, especially on routes that carry large oil and food supply. Destabilising any one choke point could not only lead to massive losses of goods, it may have considerable economic and even life-safety repercussions around the globe. Experts have already identified the growing threat of naval mines in the Strait of Mandeb that ties the Red Sea to the Gulf of Aden.[43] The joint naval mine countermeasure and clearing exercise off the coast of Bahrain in 2012—which saw participation from 30 states from six continents—[44] drew attention to the need for greater clarity on the law governing the use of naval mines in times of both peace and war. The 1907 Hague VIII Convention, which is the only treaty that expressly governs naval mines in international law, is expressly limited to contact mines.[3] Since larger container vessels can ply only in limited sea-lanes of communications and dock only in a few mega-ports, they are aggravating the disparity among maritime trade regions and stakeholders. There are inequalities arising in some littorals because of being left out of the direct port calls and the changes in the traditional sea-lanes of communication. These rapid changes in sea-lanes of communication can catalyse conditions for the rise of non-state actors. They can disrupt maritime supply chains and threaten the global economy. Unplanned port expansion activities impact urban crime and human rights violation patterns. With the exception of India, the bulk of Asia’s population of 3.5 billion is coastal or near-coastal. Over 60 percent — 2.1 billion people — live within 400 kilometres of a coast. Such population clusters along coasts commonly results in serious conflicts over shared resources including water and land, unplanned urbanisation, and continued pollution of coastal waters.[45] The current coastal population growth is not being managed equitably, reflecting these concerns.[46] Port developments may also produce tensions based on historical development and socio-cultural composition. The social composition of most ports has been influenced by centuries of migration. Ports serve as entry and exit points for migration and act as employment hubs; as a result, port demographics change continually over time. This has given them distinct advantages in promoting social interaction, intellectual tolerance, and religious exchanges. At the same time, however, the complex distribution of communities that has developed as a result of successive phases of migration can lead to security threats in locations where human development is compromised. Mega-port development and expansion represents an unprecedented scale of intervention in an otherwise organically constituted settlement. This in turn can lead to the relocation of people, or trigger tribal, cultural, economic, and even religious conflict.[47] Since the Indian Ocean littoral has always been vulnerable to criminals and anti-national activities[48]—some internal and localised[49] and others of global significance[50]— state policies need to move towards balancing development of human capital with physical capital to create sustainable solutions. The expansions required to accommodate mega-ships are problematic for other reasons. They are mostly unplanned—with short-term gains in mind—aggravating existing issues of urban congestion and related crime. Karachi seaport in Pakistan is cited as a prime example of a well-located international trading port asset that grapples with unplanned port expansions, population overflow, complex urban demography, urban poverty, and violent crime.[51] It is a key geopolitical asset in South Asian international trades as the largest warm water deep-seaport in South Asia, and owing to its proximity to the Strait of Hormuz. Singapore, by contrast, has been able to leverage its human capital to create wider economic benefits for its people by planning its port expansion activities. Successfully planned port development has played a significant role in the country’s development and trade competitiveness.[[52]](https://www.orfonline.org/research/mega-ships-in-the-indian-ocean-evaluating-the-impact-and-exploring-littoral-cooperation-53235/" \l "_edn52),[[4]](https://www.orfonline.org/research/mega-ships-in-the-indian-ocean-evaluating-the-impact-and-exploring-littoral-cooperation-53235/" \l "_ftn4) As the example of Karachi shows (and inversely, Singapore implies), most of developing Asia lacks the political motivation, expertise, or money to introduce comprehensive coastal management plans at individual country level. It is thus important for these countries to select best practices and introduce joint policies for port expansion and development that examine ways of permitting economic growth while ensuring a better quality of life for all coastal dwellers. The highest rate of urban land conversion (increased urban extension) in the coastal zone, is taking place in China and Southwest Asia.[[53]](https://www.orfonline.org/research/mega-ships-in-the-indian-ocean-evaluating-the-impact-and-exploring-littoral-cooperation-53235/" \l "_edn53) Trade flows between the two regions through the Indian Ocean account for almost 30 percent of world trade. The trends of urban land and population expansion rates in these and Southeast Asian coastal zones is expected to continue or even increase into the future if countries are pushed into expanding ports rapidly to accommodate mega-ships. Since littorals support intricate maritime infrastructure including ports, harbours, oil and gas terminals, and rail/road systems, they can create favourable conditions for illegal activities. Their governance can be a major challenge for civil security agencies if they are socially dysfunctional due to economic or resource disparities. It is therefore important to consider policy frameworks that examine port expansion plans taking into account not only economic development but the planning required to address issues including increasing crime, human rights violations, ethnic conflicts, and the dislocation of people.

#### Scenario 2 is Accidents —

#### Megaship expansion makes accidents inevitibale

Voytenko 21, professional merchant marine navigator writing for Maritime Navigation. (Mikhail, 3/26/21, Giant container ships aren’t safe, <http://www.maritimebulletin.net/2021/03/26/giant-container-ships-arent-safe/>)

The grounding of EVER GIVEN wasn’t all that accidental, it was statistically, rather high probability. If not the enormous size of EVER GIVEN, we wouldn’t have Canal blocked so effectively. Also, I’m keenly interested in the cause of a blackout which took the ship out of control. Was it a computer glitch? Inevitable failure of some wire or fuse in uncontrollable maze of ship’s equipment and cables? We’re witnessing increasing number of accidents befalling giant container ships of Post-Panamax – Neo-Panamax – ULCV types. It’s not a bad luck or coincidence, it’s already a rule. As I see it, the main cause is the sheer size of the ships, another cause is the inevitable excessive reliance on digitalization and automatization. There were major fires, there was ship lost after breaking in two, there were mass, major containers losses, and now we have a major grounding. The number of major accidents and disasters with giant container ships, will only grow, there are no achievable, available technologies and practices, to make these monsters really safe and reliable. Curiously or not, but every goal carriers claimed to achieve by designing and building these monsters, turned to be exactly the opposite. The ships are unsafe; they create jams in ports; and the rates are skyrocketing, long before the “pandemic”. We’re in to witness more major accidents, more breaks in two, major fires, container losses, collisions, etc. The only way to make container shipping safe, cheap and effective, is the way of re-directing it into a fairway of sensible, reasonable and responsible management, in a free market environment. In monopolized ocean liner sector we’re having now, this goal is absolutely unachievable. It’s Mission Impossible.

#### Ships will get bigger and more dangerous in the future

Atalyar News 21, (April 3, 2021, Waterson Senior Vice President - Marine Hull and Liability, <https://atalayar.com/en/content/ever-given-sets-alarm-bells-ringing-over-new-and-bigger-megabuqs>) \*edited for ableist language

The Japanese cargo ship that blocked the Suez Canal [lacks in comparison to] ~~is dwarfed by~~ the new mega-ships that are coming out of Asian shipyards and which, according to experts, pose increasing risks to the shipping industry. At 400 metres long and with a capacity of around 220,000 tonnes, the ship involved in the incident, the Ever Given, is just the tip of the iceberg in a sector led by Korean and Chinese companies, and whose trend is towards ever-larger sizes in line with the boom in international trade. The capacity of container ships has soared by 1,500% since they started operating more than half a century ago. In the last decade alone, their cargo potential has doubled, according to data from the German financial and insurance group Allianz Global. Bigger, more dangerous "Building ships just for economy of scale is no longer enough," Rahul Khanna, global maritime risk consultant at Allianz, tells Efe, who sees "a clear gap" between the exponential enlargement of ships and the pace at which risk mitigation measures are implemented. South Korean and Chinese shipowners are leading this "arms race" and in 2020 shared 43% and 41% respectively of the industry's global order market, according to official data and UK consultancy Clarkson. The five largest mega-carrier models today, mostly operational from 2020, are all of South Korean manufacture and range in capacity from 23,000 to 24,000 TEU, well above Ever Given, giving an idea of where the industry is heading. Last January, the world's largest commercial shipowner, China State Shipbuiding Corporation (CSSC) delivered to French logistics company CMA CGM a mega cargo ship with a capacity of up to 23,000 containers, which is about 3,000 more than the capacity of the Ever Given. The new vessel, 400 metres long and 61 metres wide, was the fifth such ship delivered to the company since September, when the Jacques Saade became, according to CSSC, the world's first LNG-powered 23,000-container freighter. Among the dangers associated with such huge vessels are greater difficulties in the event of accidents such as fires or collisions, greater exposure to extreme weather conditions and groundings such as the Ever Given in Egypt's sea lane, according to Khanna. Lessons from Suez The blockade of the Suez Canal caused a daily loss of $12-15 million per day to the shipping industry, according to initial estimates, but also taught some lessons. Ports and canals "have not always been developed sufficiently" to accommodate extra-large vessels and in some cases have become "relatively cramped" and significantly reduced "manoeuvring space and margin for error", says the aforementioned captain and maritime risk consultant. In addition, many ports "do not have sufficient infrastructure to deal with mega-ships if something goes wrong", the expert stresses, adding that "other rescue operations for ships of this type have taken much longer than Ever Given".

#### Mega ships increase risks of accidents

Waterson 19, Senior Vice President - Marine Hull and Liability for Lockton Companies LLP World’s Largest Insurance Broker. (Robert, Re-evaluating the risk of mega ships, https://www.locktoninternational.com/gb/articles/re-evaluating-risk-mega-ships)

“A consolidation process in the shipping transport market has contributed to a trend towards fewer but bigger ships,” says Robert Waterson, Senior Vice President - Marine Hull and Liability at Lockton. “Fleet operators have ordered larger ships and because they are newer this tends to have a positive effect on all costs including insurance premium levels. However, this does not necessarily mean claims volumes will be lower,” Waterson notes. With larger and more sophisticated vessels entering the sector – and more hazardous areas such as polar waters being explored – this is aggravating the risk of ever larger single losses, insurer AGCS warned in its “Marine claims trends 2018” report. “A major incident involving a fully loaded ultra-large container ship will easily result in a $1bn to $2bn insurance claim including damage to cargo, hull, salvage and wreck removal costs,” the report added. A number of container ship casualties recently fuelled a discussion about the growing risks associated with fires on mega-containerships. Ship fires are one of the major loss drivers in the shipping industry: In March 2018 a fatal fire on the new 15,252 TEU Maersk Honam. The incident is believed to have been triggered by mis-declared chemical cargoes causing a blast and fire which resulted in 130 people being taken to hospital. “The cargo description is often not clear and containers may contain chemicals and hazardous goods that were not supposed to be there or that were incorrectly described and thus loaded in the wrong part of the vessel,” says Waterson. Insurers’ apprehension focuses not only on large container ships but also on large passenger vessels, especially after Costa Concordia off the Tuscan holiday island of Giglio in Italy set off a chaotic evacuation of 4,229 passengers and crew, and 32 people died, according to the May 7, 2019 presentation “Megaship Challenges: The P&I Perspective” by Joe Hughes from the The American Club. Large vessels are more difficult to navigate, and grounding and/or collisions are harder to deal with as there is more cargo and fuel to salvage. Where salvage/wreck removal is required, the costs are vastly influenced by the type of cargo that has to be removed and how hazardous this cargo is. Very often this has to be accomplished in remote and difficult environmental conditions, and always within the requirements of both the local and international law. As environmental regulations tighten globally, these costs will only rise further and more cover will be required. A discussion in the insurance industry about whether large container ships might require a specific insurance rating, previously under consideration but not implemented, may now re-open as more data is available. As some underwriters withdraw from underwriting large container fleets this may affect renewals pricing and available capacity in the short term. “In hull and cargo, the specific risks attached to large ships are not being addressed. Ratings do not take this into account,” Waterson says. “Mega-ships carry higher risks and are not necessarily safer. While the claims frequency may fall, the size of a loss is likely to be much higher,” he notes.

#### Mega ships increase the risk of Arctic oil spills

Shavley 21, Reporter for Business Insider. (Kevin, May 1, 2021, The Ever Given crisis put mega ships under the spotlight. As vessels get bigger and more automated, a long-serving captain and other experts are weighing up the risks., <https://www.businessinsider.com/ever-given-suez-canal-blockage-mega-ships-sea-captain-2021-4>)

Shipping vessels have grown larger by multiples in just a few years, adding to worries among some industry insiders that a single mistake made by a massive ship could cause a global supply chain disruption, as the world saw with the Ever Given. That ship, which was stuck in the Suez Canal for about a week in March, slowed or stalled shipping traffic around the world. It was estimated to cost the global economy about $400 million per hour, and its effects have still been rippling through the economy in recent weeks. As ships like the Ever Given have grown over the last few decades, their crews have been shrinking because they're using more automated processes, said Captain Rahul Khanna, global head of marine risk consulting at Allianz Global Corporate & Specialty, whose team publishes an annual safety review. "Decades ago, the ships with 3,000 TEU — that's the number of twenty-foot containers that can fit onboard — were considered the big ones," said Khanna. Now, ships like the Ever Given carry maximum loads of more than 20,000 containers. Boat-building technology could in the years and decades ahead produce ever-larger ships, perhaps growing to 50,000 containers or more. If there's demand for such ships, modern technology could allow for such builds, Khanna said. Between 2006 and 2020, the largest shipping vessels in the world grew by 155%, according to a January report from the United Nations Conference on Trade and Development. The biggest ships are loading or unloading 125% more at each port they visit. With bigger boats, there could be more impactful accidents. "While seemingly efficient, they are too large to fit in some ports, increase dangers in storms, and highly piled containers are falling, causing product and the corresponding financial losses," said Cheryl Druehl, associate professor of operations management at George Mason University. Even the Ever Given debacle, which grabbed hold of the worldwide news cycle, could have been worse. If that ship's hull had broken, say, it would have taken even longer to fix the issue, Khanna said. It's likely that a crane would have had to have been constructed nearby to remove some or all of its load. Refloating it would have been a more complex task, likely stretching into months. As the shipping industry gets back to its normal routine, Khanna and other shipping industry insiders walked Insider through their concerns about the next big disaster. The most obvious answer was that another ship could get stuck in the Suez or Panama canals. The risk of a situation similar to the Ever Given's crash in one of those waterways was "unlikely but high impact," said Ambrose Conroy, founder and CEO of Seraph, a consulting and turnaround firm. The risk was lower at other heavily travelled shipping lanes, including the Singapore Strait, and the Strait of Hormuz, although it has geopolitical risks of its own, said Khanna. Ports in the future may also have trouble handling larger ships, but that's an issue that can be fixed with proper planning, Conroy said. Instead, it's the "black swan events" like the Ever Given that the industry needs to look out for. One concern is a shipping route that's becoming more popular. In decades past, a lane through the Arctic would open in summer months, giving ships a more direct path between Europe and Russia. As the climate crisis has reduced the amount of ice in those northern regions, that passageway is now increasingly being used in the winter. It's become so popular that the International Maritime Organization issued a revised Polar Code. As the Ever Given stalled global shipping in March, Moscow officials pointed to the Northern Sea Route through the Arctic as an alternative. But Arctic travel comes with its own risks. While it's unlikely that modern ships, with all their technology, would hit an iceberg, smaller ice floats can still damage hulls, Khanna said. An oil spill in the Arctic would also be devastating to marine life. And rescue crews might have difficulty reaching a stranded ship in such inhospitable waters.

#### An Arctic accident risks global species and ecosystem destruction

Tewari 17, IIASA Science Communication Fellow. (Parul Aug 16, 2017, What would an oil spill mean for the Arctic?, https://blog.iiasa.ac.at/2017/08/16/what-would-an-oil-spill-mean-for-the-arctic/)

While it can never be good news, an oil spill in the Arctic could be particularly dangerous because of its sensitive ecosystem and harsh climatic conditions, which make a cleanup next to impossible. With an increase in maritime traffic and an interest in the untapped petroleum reserves of the Arctic, the likelihood of an oil spill increases significantly. Maisa Nevalainen, as part of the 2017 Young Scientists Summer Program (YSSP), is working to assess the extent of the risk posed by oil spills in the Arctic marine areas. “That the Arctic is perhaps the last place on the planet which hasn’t yet been destroyed or changed drastically due to human activity, should be reason enough to tread with utmost caution,” says Nevalainen Although the controversial 1989 Exxon Valdez spill in Prince William Sound was quite close to the Arctic Circle, so far no major spills have occurred in the region. However, that also means that there is no data and little to no understanding of the uncertainties related to such accidents in the region. For instance, one of the significant impacts of an oil spill would be on the varied marine species living in the region, likely with consequences carrying far in to the future. Because of the cold and ice, oil decomposes very slowly in the region, so an accident involving oil spill would mean that the oil could remain in the ice for decades to come. Yet, researchers don’t know how vulnerable Arctic species would be to a spill, and which species would be affected more than others. Nevalainen, as part of her study at IIASA will come up with an index-based approach for estimating the vulnerability (an animal’s probability of coming into contact with oil) and sensitivity (probability of dying because of oiling) of key Arctic functional groups of similar species in the face of an oil spill. “The way a species uses ice will affect what will happen to them if an oil spill were to happen,” says Nevalainen. Moreover, oil tends to concentrate in the openings in ice and this is where many species like to live, she adds. During the summer season, some islands in the region become breeding grounds for birds and other marine species both from within the Arctic and those that travel thousands of miles from other parts of the world. If these species or their young are exposed to an oil spill, then it could not only result in large-scale deaths but also affect the reproductive capabilities of those that survive. This could translate in to a sizeable impact on the world population of the affected species. Polar bears, for example, have, on an average two cubs every three years. This is a very low fertility rate – so, even if one polar bear is killed, the loss can be significant for the total population. Fish on the other hand are very efficient and lay eggs year round. Even if all their eggs at a particular time were destroyed, it would most likely not affect their overall population. However, if their breeding ground is destroyed then it can have a major impact on the total population depending on their ability and willingness to relocate to a new area to lay eggs, explains Nevalainen. Due to lack of sufficient data on the number of species in the region as well as that on migratory population, it is difficult to predict future scenarios in case of an accident, she adds. “Depending on the extent of the spill and the ecosystem in the nearing areas, a spill can lead to anything from an unfortunate incident to a terrible disaster,” says Nevalainen. It might even affect the food chain, at a local or global level. “If oil sinks to the seafloor, some species run the risk of dying or migrating due to destroyed habitat – an example being walruses as they merely dive to get food from the sea floor,” adds Nevalainen. As the walrus is a key species in the food web, this has a high probability of upsetting the food chain. When the final results of her study come through, Nevalainen aims to compare different regions of the Arctic and the probability of damage in these areas, as well as potential solutions to protect the ecosystem. This would include several factors. One of them could be breeding patterns – spring, for instance, is when certain areas need to be cordoned off for shipping activities, as most animals breed during this time. “At the moment there are no mechanisms to deal with an oil spill in the Arctics. I hope that it never happens. The Arctic ecosystem is very delicate and it won’t take too much to disturb it, and the consequences can be huge, globally,” warns Nevalainen.

#### Scenario 3 is Alliances —

#### Mega-Shipping causes alliances

Veitch 16, Head of Policy for the Global Shipping Foundation, (Alex, Nov 2016, Report by Global Shipping Foundation, “The Implications of Mega-Ships and Alliances for Competition and Total Supply Chain Efficiency: An Economic Perspective”, <https://paperzz.com/doc/9427398/the-implications-of-mega-ships-and-alliances-for-competit>...)

The introduction of ultra large container vessels was the key driver behind the move to Mega Global alliances ( see the main body of the report- Mega ships and alliances: economic perspective) until only 4 Global alliances ( now reduced to three main alliances with the CMA-CGM acquisition of NOL subject to regulatory approval) and 50% of capacity to and from EU is provided by consortia in under 2 years, the number of big alliances doubled with 16 of world's top 20 carriers in one of four Mega Global alliances: CKYHE, G6, 2M and Ocean Three (this likely to be reduced to three main alliances).

#### Shipping cartels undermine all efforts to solve shipping emissions — self-regulations fail

Alger et al 21, global environmental politics scholar at the University of British Columbia. (Justin, with Jane Lister a Senior Research Fellow and Associate Director of the Centre for Transportation Studies at the Sauder School of Business, University of British Columbia, and Peter Dauvergne is Professor of International Relations at the University of British Columbia, Feb 18, 2021, Corporate Governance and the Environmental Politics of Shipping, https://brill.com/view/journals/gg/27/1/article-p144\_7.xml?language=en

. Of course, the problem is that any gains in efficiency are more than offset by the industry’s rapid growth. As projected, shipping emissions roughly doubled from 1970 to 2018.15 The IMO also projects that shipping carbon emissions will rise between 50 and 250 percent by 2050 under a business-as-usual scenario.16 Fuel efficiency matters for minimizing the environmental impact of shipping, but any gains risk being overshadowed by rising aggregate emissions. There is a similar challenge with emissions reduction efforts in ports. Despite regulatory efforts in many cities to reduce air pollution from ports, the IMO projects that port emissions are still likely to quadruple by 2050.17 The 100 most polluted ports alone affect approximately 230 million people.18 Building larger, more fuel-efficient ships is not enough to address these threats to the environment and human health. Focusing strictly on carbon emissions also risks neglecting the myriad of other environmental impacts of the shipping industry. As ships burn the lowest-grade heavy fuel oil (bunker fuel), the emissions include not just carbon but also sulfur dioxide, hydrocarbons, and various forms of nitrogen oxide, all of which have substantial environmental and human health effects. Low-grade marine fuel contains, for example, 3,500 times more sulfur than road diesel.19 According to one study, 30 percent of atmospheric sulfur aerosol around major shipping routes is directly attributable to shipping, contributing to the occurrence of acid rain and more intense storms.20 Other threats include oil spills, invasive species, disposal of hazardous material, and noise, among others. These environmental threats from global shipping have all grown since the 1970s despite progress in reducing emission rates. These trends point to a global shipping industry that looks much different today than it did in the 1970s. Transnational regulation and governance are an increasingly pervasive feature of both world affairs and scholarly analysis. An analysis of global shipping in the twenty-first century needs to account for the growing influence of corporations in global governance. Corporations, in many ways, now exert greater influence than states over global issues of stability, equity, and efficiency. This is especially true within the shipping industry. 3 The Roots of Industry Authority The shipping industry is the oldest transnational business and the transmission belt of the global economy. Historically, shipping and geopolitical power have gone hand in hand. In the past, it has been in the interest of states to limit regulations on the high seas to facilitate open competition and economies of scale in trade. The prevailing norm for high seas governance has been freedom of the seas—a norm that shipping companies have worked to reinforce in their efforts to avoid state regulation and consolidate their position. The industry’s privileged position in the global economy has made it especially effective in influencing its own governance. The freedom of the seas norm is central to why the shipping industry continues to be so difficult for states to regulate.21 This difficulty is partly the result of state design. Historically, states have advocated for minimal regulations at sea in pursuit of their strategic and economic interests. The legal justification for freedom of the seas dates back to 1609, when Dutch jurist Hugo Grotius made the case that shipping routes and ocean resources were inexhaustible resources and therefore should be available to all states equally—an important geostrategic priority for the then Dutch Republic.22 Grotius naturally could not predict the scale of extractive activity centuries later, but his legal basis for freedom of access to shipping routes largely endures today. The norm featured prominently throughout the ten-year negotiations for the UN Convention on the Law of the Sea (UNCLOS) adopted in 1982. As the world’s preeminent maritime powers throughout the nineteenth and twentieth centuries, the United Kingdom and United States viewed freedom of the seas as essential to the health of their economies. They used their collective power to enshrine it in international law. The evolution of the shipping regime since—around issues such as jurisdictional rights, damage control, and technical barriers—similarly reflects the prerogative of states to ensure free movement of ships and commerce. The historical state-based governance of shipping has, in short, worked toward enhancing industry autonomy in the name of geopolitics and commerce. States actively promoting industry autonomy gave major industry players a lot of leeway over how to organize, through their own banks and insurance companies, and most notably through loosely regulated industry “conferences” (essentially cartels).23 These conferences coordinated on maintaining control over certain shipping routes, often deliberately deploying ships on the same schedules as non-members to push them out of the market.24 Pushing smaller competitors out of the market allowed these conferences to fix prices at a higher rate, among other predatory business practices. The conference system would not endure, however. The emergence of containerization in the latter half of the twentieth century reduced shipping costs, making the market more competitive for smaller companies.25 New antitrust laws targeting conferences in Europe and the United States at the beginning of the twenty-first century followed, further undermining their viability. These regulations were intended to break up what was increasingly an unfair, oligopolistic market, but they had the unanticipated effect of providing the impetus for the further centralization of authority in the industry. This centralization of power has taken two forms: an increase in mergers and acquisitions, and the formation of shipping alliances. The high fixed-variable cost ratio of the shipping industry makes consolidation an imperative for major shipping countries.26 With the benefits of coordinating routes and prices through conferences increasingly restricted by governments, major industry players have resorted to strategic mergers and acquisitions to achieve greater economies of scale. Figure 2 depicts the sharp rise in these mergers and acquisitions in the 1990s that has continued steadily since. Some of these mergers reflect a dramatic shift in industry composition. For example, the merger of COSCO and China Shipping in 2016—China’s two largest state-owned shipping conglomerates—made COSCO Shipping the world’s fourth-largest shipping company at the time (it has since risen to third). Strategic alliances also emerged to replace conferences, and these now dominate the shipping landscape. The market share of the major alliances leaped from 30 percent in 2011 to 80 percent in 2018, depicted in Figure 3. Just three alliances—Ocean Alliance, The Alliance, and 2M Alliance—now account for 80 percent of global capacity. Formed in 2017 following a reshuffling, these three alliances allow major carriers to coordinate to enhance their global service coverage and optimize operational costs by sharing resources. The major distinction between these alliances and the conferences of old is that alliance partners do not share commercial information, including pricing. But in practice, these alliances allow a select few large shipping companies to dominate the industry even further. Minimal government antitrust efforts and lingering liner shipping block exemptions from competition policy have enabled the ongoing formation of an oligopoly in global shipping—driven by the advent of megaships and by the steady increase in industry consolidation through mergers, acquisitions, and alliances that began in the 1990s.27 The industry has, in short, been highly effective in avoiding regulation or in finding creative ways to limit its efficacy. There is perhaps no clearer instance of this than the “flags of convenience” model, by which ships can choose which country’s flag to fly. This model allows ships to fly the flag of a country of its choice, including those with minimal safety and environmental regulatory requirements. Countries that ignore IMO resolutions have an outsized ability to undermine new standards. Rather than adhering to new rules—environmental or otherwise—ships often can simply switch flags and ignore them altogether. This system has endured because it benefits all parties: flag states get more traffic, non-flag states get cheaper shipping costs, and shipping companies get increased profits.28 One possible solution is for governments to adopt an exclusion model that prohibits port access to ships that fly flags of convenience.29 But progress has been slow. In 2017, the five largest shipping fleets by flag of registration were Panama, Liberia, the Marshall Islands, Hong Kong, and Singapore.30 This model continues to allow ships to pick and choose which country’s regulations to adhere to, vastly undermining the ability of the IMO and national governments to set standards.31 The freedom of the seas norm that states have long sought to reinforce has had perverse effects on global shipping governance. Mergers and acquisitions, conferences, alliances, and flags of convenience all contribute to an industry structure that has systematically reinforced the power of major corporations. For their part, states have struggled to identify the right balance between the geopolitical and commercial importance of freedom of the seas and the need to regulate the industry (environmental or otherwise). Even when states do introduce new rules, they tend to have unintended consequences. Antitrust efforts helped break up shipping conferences, but led to today’s structure of powerful alliances. From price fixing to alliances to regulatory evasion, major corporations have significantly enhanced their market dominance and, by extension, their political power over global shipping—an outcome with perhaps unexpected consequences for the environmental governance of the industry. 4 Environmental Governance of Global Shipping The consolidation of the industry since the 1970s and the freedom of the seas approach to shipping governance have allowed major companies to exert substantial influence over their environmental governance. Consolidation can benefit states looking to better regulate industry by, most notably, making it easier to design and target regulations in an industry with fewer larger firms. But consolidation also means a few firms have substantial market power that they can leverage to shape the content of state regulation, or oppose it outright. The industry has used that leverage in tangible ways to shape the environmental governance of shipping. Historically, that influence has translated into efforts to avoid environmental regulation. The shipping industry was one of only two industries exempted from emissions cuts in the 2015 Paris Agreement on climate change—a trend that continues its similar exemption from the 1997 Kyoto Protocol. Shipping is responsible for approximately 3 percent of global carbon emissions, which would put it in the top ten global emitters if considered a country, so its exemption is a major blow to the climate regime. Environmentalists lamented the shipping exception, decrying the “corporate capture” of the IMO and UN by shipping and air transport lobbyists. But the global shipping industry has been nigh untouchable for states looking to curb the sector’s climate change impact. This untouchable status is partly by design. In addition to an embedded freedom of the seas norm, the industry further benefits from the norm of liberal environmentalism, which emerged out of the negotiations and compromises leading up to the 1992 UN Conference on Environment and Development (UNCED), often referred to as the Rio Earth Summit.32 In Rio, states confirmed the need to better protect the global environment, but with the major caveat that efforts should not interfere with economic growth and development. Ever since, this compromise has defined the state-led governance of environmental issues from climate change to deforestation to biodiversity loss. The maritime industry agreed to support the Rio agenda only as long as it could set its own regulatory agenda.33 As the transmission belt of the global economy, it was simply too essential to all countries to risk disruption. Exemptions in Paris and Kyoto, and the so-called corporate capture of the IMO, therefore merely reflect the application of this norm to global shipping and its centrality in the global economy. That is not to say that state-led governance of shipping has not been strong and successful at times. For example, states took action on oil spills by imposing stricter spill prevention standards on the industry. Oil spills can seriously damage corporate reputation, much more so than diffuse, long-term environmental impacts such as emissions. They have a lasting, visible impact, and generate public outcry. The industry has therefore been responsive to tougher IMO resolutions and technical guidelines for oil spill prevention.34 Despite the cost of implementing stricter safety standards in ship design, the industry sees the value in ceding authority on certain issues to external organizations such as the IMO. Adhering to best practices, as defined by outside governance bodies, has led to a sharp reduction in spills since the 1970s, as depicted in Figure 4. But it also provides the industry with a scapegoat in the event of a spill. Rather than a focus on internal malpractice, many oil spills become a lightning rod for reviewing the international standards set by the IMO. Oil spills can be reduced in number and their impact mitigated, but they are an inevitability of ship bunkering (refueling) and oil transport. By ceding authority on oil spills, the industry has effectively deflected the burden of responsibility to governments and international bodies on a high-profile, potentially market-damaging issue. Similarly, in 2008 the IMO adopted a sulfur cap of 0.5 percent of fuel composition to come into effect on 1 January 2020—a sizable decrease from the previous 3.5 percent limit. This regulation applies to all new and existing ships, generally requiring that ships substitute cleaner, more expensive fuel, but also requiring retrofitting of tanks and engines in many older ships. Individual flag states are still responsible for sanctions in the event of noncompliance, but the IMO has adopted a particularly aggressive stance on sulfur emissions, raising its profile as an environmental priority and effectively ratcheting up pressure on industry. Given the pressure, major industry players are expected to comply, with a projected cost for the container shipping industry of between $ 5 billion and $ 30 billion, depending on market rates for fuel.35 Regulations such as those for oil spills and the sulfur cap demonstrate that state-led governance of shipping can be effective with industry buy-in, often gained through political pressure. States can and have put limitations on certain activities with real consequences for the industry. But new safety designs, ship retrofitting, and cleaner fuels are costly. Given the potential cost of new regulations, major shipping companies have not sat idly by, instead taking the initiative to better shape the environmental governance of their industry through self-regulation. 5 Environmental Self-Governance Following the lead of their big brand customers like Coca-Cola, IKEA, Walmart, and countless others, the major shipping companies are seeking to control their regulatory fate through self-governance and CSR initiatives. By voluntarily committing to sustainability, these companies can simultaneously reduce the impetus for government-led regulation, while setting the terms of debate for future regulation.36 When companies environmentally self-regulate, even with unambitious goals, they tend to dissuade voters, activists, and government officials alike from supporting more robust regulations.37 They also create benchmarks for the rest of the industry to follow and they influence the agenda for state-led governance. In doing so, the companies enhance their autonomy from government-imposed regulation, allowing them to shape the future of the industry and protect their profitability. Put simply, through CSR major shipping companies gain political authority to decide which environmental issues to address, and how to address them in a way that will not have an oversized effect on their bottom line. The cost of these self-imposed initiatives is a price well worth paying to avoid the potential losses associated with a rigorous state-led regulatory regime. One such example was the approach that the International Chamber of Shipping (ICS) took to IMO-imposed greenhouse gas emissions reductions. Just as the IMO was advancing with a 2017–2023 road map for reducing greenhouse gases, the ICS submitted an alternative proposal to the IMO that voluntarily permitted the organization to impose reductions beginning in 2023. The ICS proposal did not specify any reduction targets. The IMO accepted the industry proposal, feeling that industry buy-in was important for compliance. But the cost of this buy-in was high. The proposal marginalized and delayed action, with the IMO ultimately setting an intensity target for 2030 while pushing back the absolute emission reduction target to 2050—letting industry off the hook in the short term. The ICS effectively co-opted the IMO reductions targets. Their watered-down proposal was representative of many CSR initiatives—weak, voluntary industry commitments that fail to adequately address the environmental problem in question.38 In this case and others, the industry used its bargaining power to supplant a more ambitious, IMO-driven plan. To the IMO—an organization that struggles with compliance—having industry on board was more important than rigorous emissions targets. In this instance, small and large firms unified through the ICS to undermine the IMO plan but, increasingly, just a few firms are able to go it alone to similar result. More recently, major industry players are moving toward greater environmental self-governance, as exemplified by green ship certification schemes. Spearheaded by industry leaders, these voluntary CSR programs, such as RightShip, Clean Cargo, Green Award, Green Ship of the Future, Environmental Ship Index, and the Clean Shipping Index, establish benchmark criteria to assess vessels on their environmental performance. They mainly measure carbon emissions and fuel efficiency. Ships that pass the mark receive a positive ranking and green seal of approval that qualifies the vessel for market incentives such as reduced port fees and better slot allocation at port. These ratings also bestow a market advantage to companies with certified vessels by allowing them to appeal to cargo customers seeking more environmentally responsible transport. More importantly, the voluntary standards are providing the industry with the opportunity to shape environmental rules. Container shipping companies representing approximately 85 percent of the world’s ocean container shipping volume, for example, participate in the Clean Cargo Program, which includes a business Climate Call to Action agenda. 6 Environmental Self-Governance at Maersk Beyond industry-led certification, there are a select few companies that are proactively pushing for better environmental regulation, most notably Maersk (or what is more formally known as A.P. Møller—Mærsk A/S). Maersk’s sustainability initiatives and its advocacy for better environmental performance by the industry have earned it a positive reputation, even among industry critics. InfluenceMap’s report on corporate capture of the IMO, for example, specifically lauds Maersk for its transparency and progressive voice in an otherwise scathing report.39 As Maersk CEO Søren Skou puts it, “Companies can no longer stay on the sidelines when it comes to global issues.”40 Maersk has been proactive on environmental governance, and its efforts are transforming not only the company but the industry itself. Other companies and associations concentrated in Northern European countries are already starting to follow suit and support environmental action such as through the Trident Alliance lobby for strong sulfur fuel regulation and enforcement. Beyond gaining political influence, there is a powerful business case for Maersk’s support for stronger environmental governance. The business value, we argue, goes beyond the standard CSR “eco-business” from enhancing environmental efficiencies, reducing waste, and gaining more control of supply chains.41 Given the nature of the global shipping industry, higher environmental standards are giving Maersk a significant competitive advantage. New environmental regulations tend to raise the costs of shipping in an industry with already low profit margins, especially for smaller carriers that cannot take advantage of economies of scale. Companies such as Maersk that benefit from the cost savings of megaships and alliances are much better positioned to absorb these kinds of financial shocks than smaller companies. Maersk wields substantial power as the market leader in an increasingly centralized industry, allowing it to pressure governments and ports to make new environmental standards compulsory and ensure “level-playing-field” enforcement to guard their competitive margins. The inevitable outcome of rising operating costs is further industry consolidation through mergers and acquisitions, smaller companies put out of business, and rising barriers to entry for aspiring companies. By escalating environmental requirements and, therefore, risks and costs on its competitors, Maersk solidifies its industry dominance. Maersk’s position on sulfur emission limits in the Port of Hong Kong exemplifies how a powerful company exerts its influence to push for stronger environmental regulations to give it a competitive advantage. In 2012, the Port of Hong Kong cut port fees in half for ships that used fuel with no more than 0.5 percent sulfur content. Maersk, along with seventeen other companies, took advantage of the program. But in 2013 Maersk threatened to switch back to cheaper, dirtier fuel if the port did not make the cleaner fuel mandatory for all. Maersk claimed the cleaner fuel cost an additional $ 2 million per year, only 40 percent of which was made up by cost savings from reduced port fees. This increased cost, Maersk argued, put it at a competitive disadvantage relative to its major competitors in East Asia.42 Maersk, however, was already using low-sulfur content fuel on its ships in part because it needed to abide by European standards. Its threat to switch to dirtier fuel was therefore somewhat hollow, as was its calculation of the additional cost to Maersk. Maersk’s incentive was certainly to level the playing field and it did so by pushing the Port of Hong Kong to adopt the same standards Maersk was already using internally. Bowing to Maersk, its largest customer, the Port of Hong Kong made the reduced-sulfur content fuel mandatory on all ships in 2015. Maersk is used here as an illustrative example, but Nordic shipping companies in particular are increasingly employing tactics similar to Maersk’s pressuring of the Port of Hong Kong. While the majority of shipping companies, often represented by the International Chamber of Shipping, remain silent on environmental issues, some of the largest shipping companies have been anything but. There are two key reasons why some of the major players like Maersk are becoming more environmentally conscious.43 The first is that they are more inclined to long-term planning. They see competitive advantage in being ahead of the curve on environmental performance, allowing them to attract environmentally conscious customers. As IKEA, Nike, Walmart, and others commit to sustainable supply chains, their public image increasingly depends on reducing the environmental cost of shipping. The CEO s of companies like Amazon, Cargill, and Walmart consistently rank in the top 100—and frequently the top 20—in lists of the most influential people in global shipping. Transnational retailers are increasingly looking to shipping emissions as one way of reducing their environmental footprints and enhancing their sustainability credentials. Large shipping companies are therefore using their strong market positions to capitalize on this growing demand for green shipping. Maersk, for example, has established “carbon pacts” with its major suppliers, notably Tetra Pak, BMW, and AkzoNobel, to meet the growing demand for greener ocean transport. Such pacts are also, however, a highly strategic means to lock customers into a long-term business relationship. The second reason is that companies such as Maersk tend to be more technologically advanced than their competition. The better environmental performance of these companies is due in large part to this technological prowess. This prowess not only includes their ability to design and build more fuel-efficient megaships, but also to conduct industry-leading research and development into the low- or zero-emissions vessels of the future. Many of these vessels will use cleaner fuels such as liquefied natural gas (LNG) and hydrogen, while others use advanced battery, fuel cell, wind, and solar technology. Whereas most shipping companies focus on operational measures such as improved maintenance and slow steaming for better fuel efficiency to address sustainability, the major industry sustainability leaders are pursuing fundamentally new ship designs. Being ahead of the curve with these advancements gives the big players an incentive to push for stricter environmental standards. Any new environmental regulations would have a greater impact on competitors lagging behind on these technologies. While the main target of these tactics may be major competitors (i.e., large Chinese shipping companies), the increased costs to smaller shipping companies are, at best, collateral damage. At worst, they represent systematic efforts by the world’s largest shipping companies to force their smaller competitors out of the market. The efforts of Maersk to use sustainability to enhance its market position is increasingly common in environmental governance. Corporations regularly look to co-opt environmental governance to set the terms for it.44 But as Strange noted in 1976, global shipping is unique in its geopolitical and commercial importance in the international system. The industry’s Paris exemption, as noted above, is perhaps the clearest indication of its exceptional status. The source of Maersk’s power is not just market dominance, but specifically market dominance in an industry that is essential to the majority of global commerce. The ongoing trend toward greater industry consolidation, particularly over the past decade, has only heightened the influence of major players. Put simply, major players such as Maersk are leveraging the industry’s status as well as their market dominance to dictate the direction and scope of environmental governance, significantly enhancing their competitiveness along the way. 7 Conclusion: The Path to Sustainability? The elephant in the room is whether, on balance, industry-driven governance is an effective mechanism for improving the overall environmental performance of the container shipping industry. It certainly is leading to short-term incremental improvements, but the answer is murkier with respect to strategic long-run advances. The progressive stance of companies such as Maersk on reducing greenhouse gas emissions is an important normative shift within the industry. It is certainly desirable that some of the largest companies in the world’s oldest transnational industry are acknowledging their environmental impacts. Such efforts are certainly better than avoidance and obfuscation, as has been common in the past. In addition, many of the technological advances in shipping are helping to decrease environmental consequences. The shipping industry is not going anywhere, so these advances are necessary if it is to become more sustainable. Yet we need to keep in mind that corporate self-governance of environmental matters is further consolidating power and authority within the shipping industry. Concentration is happening on two fronts. First, industry self-governance is co-opting governance from state-led processes. Industry increasingly decides which problems to address and how to address them. These decisions tend to lead to marginal, incremental steps that benefit business by minimizing any impact on profitability. Fuel efficiency gains, for example, do not compensate for rapid growth in global shipping. On aggregate, the environmental impact of the industry is rising despite better efficiency. As noted, international shipping currently accounts for 3 percent of global greenhouse gas emissions. One European Union study predicts that this percentage will rise to 17 percent by 2050, if left unregulated.45 Private governance alone is not enough to reduce this impact meaningfully. The problem is compounded because shipping is a derived demand industry, so its impact also depends on unregulated global consumption levels and supply chains.46 The current industry-led approach nonetheless risks being a linear solution to an exponential problem. Second, major industry players in container shipping are using environmental regulation as a tool to enhance their market dominance, leading to even greater consolidation of the industry. It is not necessarily problematic for industry leaders like Maersk to raise the bar of environmental performance and force laggards to follow suit. But as noted above, this could be problematic for global shipping because smaller companies cannot keep up in an already centralized industry with low profit margins, aggravating already existing inequities common across the international political economy. Sustainability has become, in part, a competitive tool for some corporate players to make the industry even less democratic. It can raise costs that are more easily absorbed by large companies, put a premium on economies of scale, and increase barriers to entry: all further enhancing the power and authority of major companies to dictate governance. Industry sustainability initiatives are, unexpectedly, hastening global shipping’s march toward becoming a global oligopoly, if it is not already there. We could arguably consider this trade-off between consolidation and a commitment to environmental self-governance a good thing for the industry’s performance. If it meant sustainability in global shipping, then perhaps the case could be made that a less democratic industry is an acceptable cost. The prevailing question is whether a few large container shipping companies, increasingly self-regulating, will be willing to make greater sacrifices for sustainability to prevent the bleaker projections of the industry’s environmental impact from becoming reality.

#### Mega Shipping causes runaway climate change and pollution around ports kills 100s of thousands directly

Barry et al 21, Professor in the Department of Benthic Ecology San Jose State University, (James, 2021, with Madeline Rose Climate Campaign Coordinator for Pacific Environment, and Daniel Hubbell Shipping Emission Campaign Manager at Ocean Conservancy, ‘All Aboard,’ Pacific Environment and Ocean Conservancy, https://oceanconservancy.org/wp-content/uploads/2021/04/All-Aboard-US-Policy-Zero-Emissions-Report\_FINAL.pdf)

Today, in 2021, the global shipping industry is a massive global warming polluter, emitting an estimated 1 billion metric tons of carbon dioxide each year.1 If shipping were a country, it would be the sixth-largest emitter in the world, larger than Germany.2 Greenhouse gases that contribute to global warming are not the only problem caused by the industry’s emissions — communities that live in and around ports, which are most often working-class communities of color, experience deadly pollution, which causes an estimated 250,000 premature deaths and 6 million childhood asthma cases globally each year.3 Ships play a larger role in society today than ever before. Around eighty percent of all international trade, from clothes to cars to couches, is carried by ships.4 Shipping is so “efficient” now that when Scottish fishers catch cod in the North Atlantic, they ship those fish to China for filleting and ship the fish back to Scotland to be sold in local markets because shipping costs less than filleting the fish in Scotland.5 Of course, this “efficiency” does not account for the environmental costs. Not the least of which is runaway climate change. And yet ocean-going trade volumes are projected to grow by as much as 130 percent by 2050, which will lead to dangerous increases in greenhouse gases and air pollution — unless we commit to a crash program of decarbonizing shipping.6 However, we know that the shipping industry can change, and change quickly. In the early 1900s, it switched from coal to diesel in ten to twenty years.7 To prevent the worst-case scenarios of climate disruption, we urgently need a similarly rapid transformation.

### 1AC — Plan

#### The United States federal government should increase prohibitions on anticompetitive practices including the acquisition, use, and sharing of mega-ships above 10,000 TEU capacity in container shipping expanding the authority of the Federal Maritime Commission and maritime industry to pursue legal remedies.

### 1AC — Solvency

#### Finally, Solvency —

#### Removing immunity from international shipping is key

O’Shea 17, an attorney who works on transportation and infrastructure issues, (Sean, October 3, 2017, Congress Must Stop Foreign Ocean Carriers From Harming U.S. Economy, https://morningconsult.com/opinions/congress-must-stop-foreign-ocean-carriers-from-harming-u-s-economy/)

It is long past time for Congress to update the Shipping Act to give the FMC the power it needs to bring lawsuits to block foreign carriers from colluding to set unfair prices and service terms. At the same time, lawmakers also must allow U.S. port service providers to demonstrate in court how these anticompetitive practices by the foreign cartels are harming their businesses and workers. Currently, their interests are barred from being considered in antitrust actions against foreign ocean carriers. Absent reform of this outdated regulatory environment, ports will be unable to make critical infrastructure upgrades that will allow the U.S. maritime industry to continue serving as vital economic engine for the country. Ports currently support 23 million jobs and generate more than $320 billion in tax revenue each year. And if current growth projections hold, they will become even more indispensable. By 2030, America’s trade volume is expected to quadruple, including tremendous growth in the amount of freight bound for export. Within 20 years, 60 percent of the U.S. economy is expected to depend upon port-related activity. But America’s maritime industry will not be able to continue to attract private investors and lenders to build infrastructure to meet this future economic demand unless Congress takes action now to end price-fixing and other anticompetitive practices by foreign ocean carriers that stifle industry profits, put jobs at risk and stifle private investment in much-needed port infrastructure upgrades. In particular, carriers immunized from antitrust regulation are also ordering enormous, new 22,000-container ships that will require new cranes and shore facilities, but they will not provide long-term volume guarantees necessary for ports to finance these capital improvements through regular commercial markets. Aside from this obvious legislative restoration of reasonable balance to enable private industry to meet demands, the two equally unacceptable outcomes are to do without the infrastructure and pay the economic penalty when bottlenecks occur, or look to taxpayer-funded solutions. Many lawmakers in Congress have talked about the need for modernizing regulations that constrain U.S. economic and job growth. They now have the perfect opportunity to reform U.S. maritime laws so they protect America’s shipping industry and port workers instead of lining the wallets of foreign competitors. And these reforms must begin with giving the FMC and the American maritime industry the power to take legal action to block unfair, anticompetitive actions by foreign cartels.

#### Competition law should focus on prohibiting future mega ships

Veitch 16, Head of Policy for the Global Shipping Foundation, (Alex, Nov 2016, Report by Global Shipping Foundation, “The Implications of Mega-Ships and Alliances for Competition and Total Supply Chain Efficiency: An Economic Perspective”, <https://paperzz.com/doc/9427398/the-implications-of-mega-ships-and-alliances-for-competit>...)

One key question, therefore, is whether competition law will preclude further investment in ever larger ships? This question arises, by the OECD, because that investment will increase carriers fixed and variable (bunker fuel) costs, without any benefit to shippers through reduced Freight rates since the potential economies of scale are exhausted. On the contrary, the investment will create higher cost externalities for other market players, and in particular higher risk of lower quality services for shippers operating just-in-time delivery businesses.

#### private antitrust action is necessary to deter international collusion

Lande 16, Professor of Law at the University of Baltimore School of Law, Director of the American Antitrust Institute. {Robert; Spring 2016; Antitrust, “Class Warfare: Why Antitrust Class Actions Are Essential for Compensation and Deterrence,” <https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2019&context=all_fac>)

OUR RECENT EMPIRICAL STUDIES demonstrate five reasons why antitrust class action cases are essential: (1) class actions are virtually the only way for most victims of antitrust violations to receive compensation; (2) most successful class actions involve collusion that was anticompetitive; (3) class victims’ compensation has been modest, generally less than their damages; (4) class actions deter significant amounts of collusion and other anticompetitive behavior; and (5) anticompetitive collusion is underdeterred, a problem that would be exacerbated without class actions. Recent court decisions undermine class action cases, thus preventing much effective and important antitrust enforcement.1 Class Actions Are Virtually the Only Way for Most Victims of Federal Antitrust Violations to Receive Compensation The antitrust statutes provide that violations result in automatic treble damages for the victims.2 The legislative history 3 and case law indicate that compensation of victims is a goal, perhaps the dominant goal, of antitrust law’s damages remedy.4 Class actions play an essential role in ensuring that the treble damages remedy serves its intended function of “protecting consumers from overcharges resulting from price fixing.”5 As the Supreme Court noted, “[C]lass actions . . . may enhance the efficacy of private [antitrust] actions by permitting citizens to combine their limited resources to achieve a more powerful litigation posture.”6 Accordingly, “courts have repeatedly found antitrust claims to be particularly well suited for class actions . . . .”7 Without class actions, cartels and other antitrust violators that inflict widespread economic harm would have little to fear from the treble damages remedy. This is because, as a practical matter, class action cases are virtually the only way for most victims of anticompetitive behavior to receive compensation.8 A 2013 study that Professor Joshua Davis and I conducted documents the benefits of private enforcement by analyzing 60 of the largest recent successful private U.S. antitrust cases (defined as suits resolved since 1990 that recovered at least $50 million in cash for the victims9 ). These actions returned a total of $33.8–$35.8 billion in cash to victims of anticompetitive behavior.10 These figures do not include products, discounts, coupons, or the value of injunctive relief or precedent—only cash.11 Consequently, these totals significantly understate the actual benefits of this litigation to the victims involved. And, of course, this study covered only 60 suits (albeit 60 of the largest private recoveries) out of the many hundreds of private cases filed in the United States during this period. Of these 60 large private cases, 49 were class action suits.12 These cases recovered a total of $19.4–$21.0 billion—the majority of the amount analyzed in our study.13 Since these were among the largest private actions ever filed, specific conclusions based upon these results may not generalize perfectly to all class action cases. They do suggest, however, that without class action cases, effective and significant victim compensation would be reduced dramatically. Most Successful Class Actions Involve Collusion that Was Anticompetitive Almost every private antitrust case that results in a remedy does so through a settlement,14 so the underlying merits of the plaintiffs’ claims usually have not been definitively assessed by a court or jury. Critics sometimes use this fact to support assertions that class actions usually are meritless, that plaintiffs often receive huge sums from cases not involving anticompetitive conduct, and that private antitrust actions often amount to legalized blackmail or extortion.15 Antitrust class actions arise in widely varied market and factual settings, and views about the merits of specific cases and the litigation risks involved vary as well. This makes it extremely difficult to draw objective conclusions about the merits of settlements. Nevertheless, there are good reasons to believe that the vast majority of class action cases in the Davis/Lande study involved legitimate claims. Forty-one of the 49 class actions involved allegations of collusion,16 and the same conduct supporting the settlements gave rise to criminal penalties in 20 cases; to civil relief by the FTC or DOJ in 8 cases; to civil relief by a state or other governmental unit in 9 cases; to a trial that the defendants lost and that was not overturned on appeal in 7 cases; to a class being certified in 22 cases; and to plaintiffs surviving or prevailing at summary judgment in 12 cases.17 Overall, 44 of the 49 class action suits (90 percent) exhibited at least one of these forms of legal validation as to their merits. (The 5 actions that did not have at least one of these indicia settled too early for a substantive evaluation of their merits).18 These results are broadly consistent with a finding that Professor John Connor derived from an analysis of 130 private recoveries worldwide in international cartel cases for which he could obtain the necessary data.19 He found that of the 50 largest worldwide settlements, measured by their monetary recoveries in constant dollars, 49 had been filed against international cartels.20 Of these, 51 percent were follow-ups to successful DOJ prosecutions, and another 8 percent were filed after fines by the EC or other non-U.S. antitrust authorities.21 Using a different data set, Connor and I found that 36 of 71 (also 51 percent) successful U.S. class action recoveries followed successful DOJ criminal cases.22 This data does not prove that these or any other specific class action cases involved anticompetitive conduct. But critics who assert that most antitrust class actions are little more than legalized blackmail rely only on anecdotes, hypotheticals, and opinions (often of defendants in the cases), without support from studies, and with no reliable empirical evidence that the actions lack merit or that settlement amounts are excessive compared to the anticompetitive harm.23 To be fair, one should compare the above indicia of validity to the absence of any systematic evidence underpinning the critics’ charges. Critics also sometimes assert that remedies typically secured in class action settlements are at best dubious and often are completely worthless, consisting of useless coupons, meaningless discounts, and obsolete products. They argue with regard to cash payments (without providing even a single anecdote) that “issuing [class members] a check is often so expensive that administrative costs swallow the entire recovery.”24 According to many critics the only ones to benefit from private enforcement are the attorneys involved.25 The critics who make these charges, however, never offer evidence beyond opinions, hypotheticals, and occasional anecdotes. Indeed, for the 49 antitrust class action cases that Davis and I studied, the data show that, overall, only a total of approximately 20 percent of the recoveries went for attorney fees (14.3 percent) or claims administration expenses (4.1 percent).26 The rest was returned to the victims. This result is consistent with older estimates of legal fees in antitrust class action cases in the 6.5 to 21 percent range.27 Critics also sometimes examine what happened in other areas of law and assert that these outcomes occur in contemporary antitrust class action suits as well. But they never offer systematic evidence from antitrust cases to support their opinions.28 Interestingly, only one of the lawsuits in the Davis/Lande study involved a coupon remedy—the Auction Houses cases. However, those coupons were fully redeemable for cash if they were not used for five years.29 The actions Davis and I studied were among the largest antitrust class actions ever brought and therefore might not be representative of class action cases in general. Abuses surely occur from time to time in class action cases, as they do almost everywhere in the legal system. But a majority of the critics’ most egregious examples are from other areas of law or are quite old.30 No one has ever presented reliable evidence showing that such examples occur frequently or are typical of contemporary antitrust class action cases.31 Class Victims’ Compensation Has Been Modest, Generally Less than Their Damages Even though the $19.4–$21.0 billion that Davis and I showed had been returned to victims in 49 class action cases is a significant figure when viewed in absolute terms, it probably was not nearly enough to fully compensate all of the victims involved. To ascertain “Recovery Ratios” (the percentage of the illegal overcharges that was obtained in the form of monetary payments to victims in private actions), Professor Connor and I assembled a sample consisting of every completed private case against cartels discovered from 1990 to mid-2014 for which we could find the necessary information. For each of these 71 cases we assembled neutral scholarly estimates of affected commerce and overcharges and compared these estimates to the damages secured in the private actions filed against these cartels.32 The victims of only 14 of the 71 cartels (20 percent) recovered their damages (or more) in settlement. Only seven (10 percent) received more than double damages. The rest— the victims in 57 cases—received less than their damages. In four cases, the victims received less than 1 percent of damages, and in 12 cases they received less than 10 percent of damages. Overall, the median average settlement was 37 percent of single damages. The unweighted mean settlement (a figure that gives equal weights to the cartels that operated in large and small markets) was 66 percent. The mean and median average Recovery Ratios are higher (81 percent and 52 percent, respectively), for the 36 cases that were follow-ups to DOJ prosecutions that imposed criminal sanctions.33 Because these Recovery Ratios do not include any valuations of products, discounts, coupons, or the value of injunctive relief or precedent, the actual worth of these remedies to the victims is greater than the figures reported above. Nevertheless, it fairly can be concluded that antitrust class action cases often return important recoveries to victims that are significant in absolute terms, but usually are modest when measured against the sizes of the overcharges involved. Class Actions Deter Significant Amounts of Collusion and Other Anticompetitive Behavior Private class action cases serve to deter a substantial amount of anticompetitive activity, perhaps even more than the highly acclaimed anti-cartel program of the U.S. Department of Justice, which often results in prison sentences for cartel participants.34 Virtually every contemporary analysis of antitrust enforcement assumes that deterrence is an important purpose of the private treble damages remedy provision.35 The Supreme Court has underscored this point. For example, in Reiter v. Sonotone Corp., the Court explained: Congress created the treble-damages remedy of § 4 precisely for the purpose of encouraging private challenges to antitrust violations. These private suits provide a significant supplement to the limited resources available to the Department of Justice for enforcing the antitrust laws and deterring violations.36 The government, however, cannot be expected to do all of the necessary enforcement for a number of reasons, including budgetary constraints, “undue fear of losing cases; lack of awareness of industry conditions; overly suspicious views about complaints by ‘losers’ that they were in fact victims of anticompetitive behavior; higher turnover among government attorneys; and the unfortunate, but undeniable, reality that government enforcement (or non-enforcement) decisions are, at times, politically motivated.”37 A recent study highlights the deterrence benefits of private enforcement by comparing the likely deterrent effects of private antitrust enforcement to that of criminal anti-cartel enforcement by the Antitrust Division.38The surprising result is that private enforcement—and even just antitrust class action cases considered separately—probably deters more anticompetitive behavior. From 1990 through 2011 the total of DOJ corporate antitrust fines, individual fines, and restitution payments totaled $8.2 billion. (Dis)valuing a year of prison or house arrest at $6 million39 adds another $3.6 billion in total deterrence from the DOJ’s anti-cartel cases, yielding a total of approximately $11.8 billion. This is a substantial figure, and the possibility of incurring such sanctions surely has deterred a significant number of would-be antitrust violators.40 Nevertheless, these penalties amount to approximately 50 percent of the $19.4–$21.0 billion in cash alone (not including products, etc.) secured by just the 49 studied class cases that were completed during the same period.41 These private cases were only a portion of the hundreds of successful class action cases completed during this period (albeit they were many of the largest).42 The total amount of payouts in class action cases is so high that it probably deters more anticompetitive conduct than even the DOJ’s anti-cartel enforcement efforts.

#### Those cases force a reduction in ship size, improvement in services, and lower costs

Haralambides 19, Professor of Maritime Economics and Logistics at Erasmus University Rotterdam. (Hercules, 2019, Gigantism in container shipping, ports and global logistics: a time-lapse into the future Maritime Economics & Logistics volume 21, pages1–60, https://link.springer.com/article/10.1057/s41278-018-00116-0)

Such consolidation in an industry that is already highly concentrated is bound to take place under the increasing scrutiny of the regulator who, with the final consumer in mind, is likely to encourage more competition rather than further consolidation. If the liner shipping market thus becomes more open and competitive in the future, i.e. if alliance agreements regarding vessel sharing, investment planning, etc. are scrutinized more closely for their compatibility with competition law, as I expect, the joint filling of the ship will become more difficult and ship sizes shall by necessity decrease, together with an increase in the number of ports of call. Low prices would then be achieved through higher competition rather than big ship sizes. In such a scenario, shipping companies will be forced to provide the services their customers want, rather than the ones they find it convenient to offer. Shippers do not like too much transshipment and, if they could help it, they would like their container as close to them as possible. Reduction in ship size and more direct calls could thus follow the example of the air-transport industry. The most common jet flying across the Atlantic is not the 420-seat 747 jumbo but the 200 plus-seat Boeing 767. Eight out of 10 transatlantic planes are twin-engine craft such as the 767, its bigger brother the 777, or the various airbuses. This taste for smaller international jets reflects the fact that travellers now like to shun big international hubs such as London and New York and fly directly to their destinations. This is changing the international market into a web of direct intercontinental flights rather than one big air-bridge between London and New York.

#### \*\*\*Only antitrust can reduce the size of mega ships

Haralambides 19, Professor of Maritime Economics and Logistics at Erasmus University Rotterdam. (Hercules, 2019, Gigantism in container shipping, ports and global logistics: a time-lapse into the future Maritime Economics & Logistics volume 21, pages1–60, https://link.springer.com/article/10.1057/s41278-018-00116-0)

The impact of alliances on container shipping and ports I just stated that the gigantism in shipping has been induced by both port competition and shipping alliances. Indeed, without the ability to use each other’s ships, no carrier alone would be able to achieve a capacity utilization high enough to justify the use of present day mega-ships, while at the same time offering the frequency that shippers demand. But carriers have gone a step too far: At the time of writing, three alliances carry 80% of global trade. Such consolidation, in an industry that is already highly concentrated, is bound to take place under the increasing scrutiny of the regulator who, with the final consumer in mind, is likely to encourage more competition rather than further consolidation. If this happens, i.e., if container shipping becomes more open and competitive in the future, and alliance agreements regarding vessel sharing, investment planning, etc. are scrutinized more closely for their compatibility with competition law, as I expect, the joint filling of the ship will become more difficult and ship sizes shall by necessity decrease, together with an increase in the number of ports of call. Low prices would then be achieved through more competition rather than big ship sizes. This is more so when it is doubtful if the economies of scale in shipping are passed on to the final consumer, as required by the consortia block exception from the provisions of competition law in Europe.Footnote51

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## Adv — Mega Ships

## K — Set Col

#### It’s key to create solidarity and mobilization of indigenous led-movements ⁠— specifically in the context of environmental movements

Davis 16, Associate Professor, Indigenous Studies at Trent University (Lynne Davis, 2016 “Fostering Citizen Engagement in Indigenous/Non-Indigenous Relations,” Presented at ‘Sharing the Land, Sharing a Future: A National Forum On Reconciliation,’ from 11-2 to 11-4, 2016, <http://www.queensu.ca/sps/sites/webpublish.queensu.ca.spswww/files/files/Events/Conferences/RCAP/Papers/LynneDavisRCAP%20Backgroundpaper.pdf>)

\*AT: Tuck and Yang

\*AT: Ethics of Incommensurability

These mobilizations led by Indigenous peoples reach across borders and in an era of global communications, can bring Indigenous and non-Indigenous peoples into solidarity very quickly, as demonstrated in Standing Rock, North Dakota resistance. Anti-globalization activists, environmentalists and non-Indigenous peoples engaged in challenging social and environmental relationships have found commonalities in different times and spaces. 45 Tuck and Yang point to the incommensurability of struggles and the contingent nature of Indigenous and non-Indigenous solidarities.46 Certainly, there are networks forged on the front-lines of struggle that can be mobilized as new challenges appear.

Campaigns

19. Idle No More offers an outstanding example of the mobilization potential of Indigenous-led movements.47 Organized in December, 2012 using social media, Idle No More galvanized Indigenous peoples and their supporters across the country in peaceful gatherings to protest the oppressive and colonial actions of the federal government in all their manifestations, beginning with proposed legislation Bill C-45 removing environmental protections for waters. This inclusive movement created a common platform for Indigenous peoples engaged in specific land-based struggles and those fighting against colonialism, capitalism and a host of issues grounded in dispossession of Indigenous lands, racism, discrimination, and violence such as the Murdered and Missing Indigenous Women and Girls campaign. This “round dance revolution” gave presence to Indigenous peoples in urban spaces and drew in thousands of non-Indigenous peoples who shared a frustration with the dictatorial style of the federal Harper government.

#### Their theory falls into pessimism traps that stifle Native agency

Lightfoot 20, associate professor in First Nations and Indigenous Studies and the Department of Political Science, University of British Columbia, Ojibwe (Sheryl Lightfoot, 2020, “The Pessimism Traps of Indigenous Resurgence,” Pessimism in International Relations, Chapter 9, pp. 162-170, SpringerLink)

Pessimism Trap 2: The State is Unified, Deliberate and Unchanging in Its Desire to Dispossess Indigenous Peoples and Gain Unfettered Access to Indigenous Lands and Resources

In other words, colonialism by settler states is a constant, not a variable, in both outcome and intent. Further, the state is not only intentionally colonial, but it is also unifed in its desire to co-opt Indigenous peoples as a method and means of control.

In 2005’s Wasase, Alfred presents the state as unitary, intentional and unchanging in its desire to colonise and oppress Indigenous peoples noting, ‘I think that the only thing that has changed since our ancestors first declared war on the invaders is that some of us have lost heart’.22 Referring to current state policies as a ‘self-termination movement’, Alfred states, ‘It is senseless to advocate for an accord with imperialism while there is a steady and intense ongoing attack by the Settler society on everything meaningful to us: our cultures, our communities, and our deep attachments to land’.23 Alfred’s Peace, Power, Righteousness (2009) also argues that the state is deliberate and unchanging, stating quite plainly that ‘it is still the objective of the Canadian and US governments to remove Indians, or, failing that, to prevent them from benefitting, from their ancestral territories’.24 Contemporary states do this, he argues, not through outright violent control but ‘by insidiously promoting a form of neo-colonial self-government in our communities and forcing our integration into the legal mainstream’.25 According to Alfred, the state ‘relegates indigenous peoples’ rights to the past, and constrains the development of their societies by allowing only those activities that support its own necessary illusion: that indigenous peoples today do not present a serious challenge to its legitimacy’.26 Linking back to the aim of co-option, Alfred argues that while the state’s desire to control Indigenous peoples and lands has never changed, the techniques for doing so have become subtler over time. ‘Recognizing the power of the indigenous challenge and unable to deny it a voice’, due to successful Indigenous resistance over the years, ‘the state has (now) attempted to pull indigenous people closer to it’.27 According to Alfred, the state has outwitted Indigenous leaders and ‘encouraged them to reframe and moderate their nationhood demands to accept the fait accompli of colonization, (and) to collaborate in the development of a “solution” that does not challenge the fundamental imperial lie’.28 In a similar vein, Coulthard’s central argument is centred on his understanding of the dual structure of colonialism. Drawing directly from Fanon, Coulthard finds that colonialism relies on both objective and subjective elements. The objective components involve domination through the political, economic and legal structures of the colonial state. The subjective elements of colonialism involve the creation of ‘colonized subjects’, including a process of internalisation by which colonised subjects come to not only accept the limited forms of ‘misrecognition’ granted through the state but can even come to identify with it.29 Through this dual structure, colonial power now works through the inclusion of Indigenous peoples, actively shaping their perspectives in line with state discourses, rather than merely excluding them, as in years past. Therefore, any attempt to seek ‘the reconciliation of Indigenous nationhood with state sovereignty is still colonial insofar as it remains structurally committed to the dispossession of Indigenous peoples of our lands and self-determining authority’.30 Concerning the state in relation to Indigenous peoples on the international level, Corntassel argues that states and global organisations, for years, have been consistently framing Indigenous peoples’ self-determination claims in ways that ‘jeopardize the futures of indigenous communities’.31 He claims that states frst compartmentalise Indigenous self-determination by separating lands and resources from political and legal recognition of a limited autonomy. Second, he notes, states sometimes deny the existence of Indigenous peoples living within their borders. Thirdly, a political and legal entitlement framing by states deemphasises other responsibilities. Finally, he claims that states, through the rights discourse, limit the frameworks through which Indigenous peoples can seek self-determination. Like Alfred and Coulthard, Corntassel has concluded that states are deliberate and never changing in their behaviour. With this move, Corntassel limits and actually demeans Indigenous agency, overlooking the reality that Indigenous organisations themselves chose the human rights framework and rights discourse as a target sphere of action precisely because, as was evident in earlier struggles like slavery, civil rights or women’s rights, these were tools available to them that had a proven track record of opening up new possibilities and shifting previous state positions and behaviour. Indigenous advocates also cleverly realised, by the 1970s, that the anti-discrimination and decolonisation frames could be used together against states. States did, in no way, nefariously impose a rights framework on Indigenous peoples. Rather, Indigenous organisations and savvy Indigenous political actors deliberately chose to frame their self-determination struggles within the human rights framework in order to bring states into a double bind where they could not credibly claim to adhere to human rights and claim that they uphold equality while simultaneously denying Indigenous peoples’ human rights and leaving them with a diminished and unequal right of self-determination. But, because he is caught in the pessimism trap of ~~seeing~~ the state only as unified, deliberate and unchanging, Corntassel overlooks and diminishes the clear story of Indigenous agency and the potential for positive change in advancing self-determination in a multitude of ways.

Pessimism Trap 3: Engagement with the Settler State is Futile, if Not Counter-Productive

Since the state always intends to maintain, if not expand, colonial control, and is seeking to co-opt as many Indigenous peoples as possible in order to maintain or expand its dispossession and control, it is therefore futile, at best, and actually dangerous to Indigenous existence to engage with the state. Furthermore, all patterns of engagement will lead to co-optation as the state is cunning and unrelenting in its desire to co-opt Indigenous leaders, academics and professionals in order to gain or maintain control of Indigenous peoples. Alfred argues, in both his 2005 and 2009 books, that any Indigenous engagement with the state, including agreements and negotiations, is not only futile but fundamentally dangerous, as such pathways do not directly challenge the existing colonial structure and ‘to argue on behalf of indigenous nationhood within the dominant Western paradigm is self-defeating’.32 Alfred states that a ‘notion of nationhood or self-government rooted in state institutions and framed within the context of state sovereignty can never satisfy the imperatives of Native American political traditions’33 because the possibility for a true expression of Indigenous self-determination is ‘precluded by the state’s insistence on dominion and its exclusionary notion of sovereignty’.34 Worst of all, according to Alfred, when Indigenous communities frame their struggles in terms of asserting Aboriginal rights and title, but do so within a state framework, rather than resisting the state itself, it ‘represents the culmination of white society’s efforts to assimilate indigenous peoples’.35 Because it is impossible to advance Indigenous self-determination through any sort of engagement with the state, Coulthard also advocates for an Indigenous resurgence paradigm that follows both his mentor Taiaiake Alfred but also Anishinaabe feminist theorist Leanne Simpson.36 As Coulthard writes, ‘both Alfred and Simpson start from a position that calls on Indigenous peoples and communities to “turn away” from the assimilative reformism of the liberal recognition approach and to instead build our national liberation efforts on the revitalization of “traditional” political values and practices’.37 Drawing upon the prescriptive approach of these theorists, Coulthard proposes, in his concluding chapter, five theses from his analysis that are intended to build and solidify Indigenous resurgence into the future:

1. On the necessity of direct action, meaning that physical forms of Indigenous resistance, like protest and blockades, are very important not only as a reaction to the state but also as a means of protecting the lands that are central to Indigenous peoples’ existence;

2. Capitalism, No More!, meaning the rejection of capitalist forms of economic development in Indigenous communities in favour of land-based Indigenous political-economic alternative approaches;

3. Dispossession and Indigenous Sovereignty in the City, meaning the need for Indigenous resurgence movements ‘to address the interrelated systems of dispossession that shape Indigenous peoples’ experiences in both urban and land-based settings’38;

4. Gender Justice and Decolonisation, meaning that decolonisation must also include a shift away from patriarchy and an embrace of gender relations that are non-violent and refective of the centrality of women in traditional forms of Indigenous governance and society; and

5. Beyond the Nation-State. While Coulthard denies that he advocates complete rejection of engagement with the state’s political and legal system, he does assert that ‘our efforts to engage these discursive and institutional spaces to secure recognition of our rights have not only failed, but have instead served to subtly reproduce the forms of racist, sexist, economic, and political confgurations of power that we initially sought…to challenge’.39 He therefore advocates expressly for ‘critical self-refection, skepticism, and caution’ in a ‘resurgent politics of recognition that seeks to practice decolonial, gender-emancipatory, and economically nonexploitative alternative structures of law and sovereign authority grounded on a critical refashioning of the best of Indigenous legal and political traditions’.40

Corntassel also demonstrates the third pessimism trap, that all engagement with the state is ultimately futile. For the most part, however, Corntassel’s observation is that the UN system operates like a reverse Keck and Sikkink ‘boomerang model’ and ‘channels the energies of transnational Indigenous networks into the institutional fiefdoms of member countries’, by which an ‘illusion of inclusion’ is created.41 He argues that, in order to be included or their views listened to, Indigenous delegates at the UN must mimic the strategies, language, norms and modes of behaviour of member states and international institutions. Corntassel fnds that ‘what results is a cadre of professionalized Indigenous delegates who demonstrate more allegiance to the UN system than to their own communities’.42 In his final analysis, he charges that the co-optation of international Indigenous political actors is highly ‘effective in challenging the unity of the global Indigenous rights movement and hindering genuine dialogue regarding Indigenous self-determination and justice’.43 Finding that states deliberately co-opt and provide ‘illusions of inclusion’ to Indigenous political actors in UN settings, Corntassel comes to the same conclusion as Alfred concerning the futility of engagement, arguing that because transnational Indigenous networks are ‘channeled’ and ‘blunted’ by colonial state actors, ‘it is a critical time for Indigenous peoples to rethink their approaches to bringing Indigenous rights concerns to global forums’.44

Imagining a Post-Colonial Future: Pessimistic ‘Resurgence’ Versus the Optimism and Tenacity of Indigenous Movements on the Ground

All of these writers advocate Indigenous resurgence, through a combination of rejecting the current reconciliation politics of settler colonial states, coupled with a return to land-based Indigenous expressions of governance as the only viable, ‘authentic’ and legitimate path to a better future for Indigenous peoples, which they refer to as decolonisation. While inherently critical in their orientation, these three approaches do make some positive and productive contributions to Indigenous movements. They help shed light on the various and subtle ways that Indigenous leaders and communities can become co-opted into a colonial system. They help us to hold leadership accountable. They also help us keep a strong focus on our traditional, cultural and spiritual values as well as our traditional forms of governance which then also helps us imagine future possibilities. As I have pointed out here, however, all three theorists are also caught in the same three pessimism traps: authenticity versus co-option; a vision of the state as unified, deliberate and never changing in its desire to colonise and control; and a view of engagement with the state as futile, if not dangerous, to Indigenous sovereignty and existence. When combined, these three pessimism traps aim to inhibit Indigenous peoples’ engagement with the state in any process that could potentially re-imagine and re-formulate their current relationship into one that could be transformative and post-colonial, as envisioned by the UN Declaration on the Rights of Indigenous Peoples. The pessimism traps together work to foreclose any possibility that there could be credible openings of opportunity to negotiate a fairer and just relationship of co-existence with even the most progressive state government. This pessimistic approach is not innocuous. By overemphasising structure and granting the state an enormous degree of agency as a unitary actor, this pessimistic approach does a remarkable disservice to Indigenous resistance movements by proscribing, from academia, an extremely narrow view of what Indigenous self-determination can and should mean in practice. By overlooking and/or discounting Indigenous agency and not even considering the possibility that Indigenous peoples could themselves be calculating, strategic political actors in their own right, and vis-à-vis states, the pessimistic lens of the resurgence school unnecessarily, unproductively and unjustly limits the field of possibility for Indigenous peoples’ decision-making, thus actually countering and inhibiting expressions of Indigenous self-determination. By condemning—writ large—all Indigenous peoples and organisations that wish to seek peaceful co-existence with the state, negotiate mutually beneficial agreements with the state, and/or who have advocated on the international level for a set of standards that can provide a positive guiding framework for Indigenous-state relations, the pessimistic lens of resurgence forecloses much potential for new and improved relations, in any form, and is very likely to lead to deeper conflicts between states and Indigenous peoples, and potentially, even violent action, which Fanon indicated was the necessary outcome. The pessimism traps of the resurgence school are therefore, likely self-defeating for all but the most remote and isolated Indigenous communities. Further, this approach is quite out of step with the actions and vision of many Indigenous resistance movements on the ground who have been working for decades to advance Indigenous self-determination, both domestically and globally, in ways that transform the colonial state into something more just and may eventually present creative alternatives to the Westphalian state form in ways that could respect and accommodate Indigenous nations. Rather, it aims to shame and blame those who wish to explore creative and innovative post-colonial resolutions to the colonial condition. The UN Declaration on the Rights of Indigenous Peoples (the Declaration or UN Declaration) was adopted by the General Assembly in 2007 after 25 years of development. The Declaration is ground-breaking, given the key leadership roles Indigenous peoples played in negotiating and achieving this agreement.45 Additionally, for the first time in UN history, the rights holders, Indigenous peoples, worked with states to develop an instrument that would serve to promote, protect and affirm Indigenous rights, both globally and in individual domestic contexts.46 Many Indigenous organisations and movements, from dozens of countries around the world, were involved in drafting and negotiating the UN Declaration and are now advocating for its full implementation, both internationally and in domestic and regional contexts. In Canada, some of the key organisational players—the Grand Council of the Crees (Eeyou Istchee), the Assembly of First Nations, and the Union of British Columbia Indian Chiefs, or their predecessor organisations—were involved in the drafting and lengthy negotiations of the UN Declaration during the 1980s, 1990s and 2000s. In the United States, organisations like the American Indian Law Alliance and the Native American Rights Fund have been involved as well as the Navajo Nation and the Haudenosaunee Confederacy, who represent themselves as Indigenous peoples’ governing institutions. From Scandinavia, the Saami Council and the Sami Parliaments all play a key role in advancing Indigenous rights. In Latin America, organisations like the Confederación de Nationalidades Indígenas del Ecuador (CONAIE) and the Consejo Indio de Sud America (CISA) advocate for implementation of the UN Declaration. The three, major transnational Indigenous organisations— the World Council of Indigenous Peoples, the International Indian Treaty Council and the Inuit Circumpolar Council—were all key members of the drafting and negotiating team for the UN Declaration, and the latter two, which are still in existence, continue their strong advocacy for its full implementation. Implementation of the UN Declaration on the Rights of Indigenous Peoples requires fundamental and significant change, on both the international and domestic levels. Because implementation of Indigenous rights essentially calls for a complete and fundamental restructuring of Indigenous-state relationships, it expects states to enact and implement a signifcant body of legal, constitutional, legislative and policy changes that can accommodate such things as Indigenous land rights, free, prior and informed consent, redress and a variety of self-government, autonomy and other such arrangements. States are not going to implement this multifaceted and complex set of changes on their own, however. They will require significant political and moral pressure to hold them accountable to the rhetorical commitments they have made to support this level of change. They will also require ongoing conversation and negotiation with Indigenous peoples along the way, lest the process becomes problematically one-sided. Such processes ultimately require sustained political will, commitment and engagement over the long term, to reach the end result of radical systemic change and Indigenous state relationships grounded in mutual respect, co-existence and reciprocity. This type of fundamental change requires creative thinking, careful diplomacy, tenacity, and above all, optimistic ~~vision~~ [takes], on the part of Indigenous peoples. The pessimistic approaches of the resurgence school are ultimately of little use in these efforts, other than as a cautionary tale against state power, of which the organisational players are already keenly aware. Further, by dismissing and discouraging all efforts at engagement with states, and especially with the blanket accusations that all who engage in such efforts are ‘co-opted’ and not ‘authentically’ Indigenous, the resurgence school actually creates unnecessary negative feelings and divisions amongst Indigenous movements who should be pooling limited resources and working together towards better futures.

#### It's incomplete and neglects responsibility by flattening history

Greer 19, professor of history and Canada Research Chair in Colonial North America at McGill University (Allan Greer, 2019, “Settler Colonialism and Empire in Early America,” The William and Mary Quarterly, Vol. 76, No. 3 (July 2019), pp. 383-390)

The most rigorous of the settler colonial theorists in my opinion, Wolfe insisted that his subject was not an ideology or a set of ideas but rather a logic. “Although predicated on land rather than on human bodies,” he writes, “settler colonialism is premised on a cultural logic of elimination that insistently seeks the removal of indigenous humans from the land in question.”4 The “logic of elimination” is a basic drive to get rid of the Indigenous presence by one means or another and to replace it with a new society. This approach encompasses material as well as discursive aspects; massacre, removal, assimilation, and immigration are part of its repertoire, and so too are various forms of racism, legal instruments of dispossession, and historical narratives denying violence.5 Heavily indebted to Marxism and postcolonial theory, Wolfe grounded his concept in material considerations: the basic distinction between settler colonialism and the “ordinary” colonialism of the sort one finds in nineteenth-century India or Africa is that the latter depends on the exploitation of native labor while the former had no real need for the natives’ work and only wanted their land.6 Extending this basic analysis, Wolfe developed a highly suggestive, if somewhat schematic, theory of race formation.7 With the United States mainly in mind, he argued that the racism directed at African Americans and that focused on Native Americans were different species of exclusion. Whereas the one had to do with denigrated, unfree labor, the other targeted peoples whose very existence stood as an obstacle to the expansion of settler society—it was the racism of work versus the racism of land. Wolfe pointed to the divergent treatment of African Americans and Indigenous people where “race mixing” was concerned, arguing that the “one-drop rule” that treated anyone with the slightest African ancestry as black reflected the colonizer’s concern to maximize the laboring population, whereas the tendency to assimilate people of European and Indigenous ancestry to the white category (particularly characteristic of Australian practice) stemmed from an impulse to reduce and eliminate the Native population. All very well where the nineteenth century is concerned, but readers of the Quarterly may legitimately ask whether the concept of settler colonialism helps us to understand North America prior to the late eighteenth century. Or is Wolfe’s framework stuck in the modern? Is it indeed a theory of modernity? Wolfe did have much to say on early America and settler colonialism, but insightful though his writings on that subject are, they are quite different from the reflections he derived from the Australian case. The materialism has faded, replaced by a preoccupation with colonialist doctrines and discourses. He emphasized an imperialist legal notion, the “doctrine of discovery,” whereby European monarchies supposedly asserted both sovereignty and dominium from the moment of contact, reducing Indigenous peoples to mere occupants of the land. This he saw as the basis for a future physical dispossession and replacement by settlers.8 On this point, Wolfe seems to be swallowing the historical fable promulgated in the 1820s by Chief Justice John Marshall to justify Indian removal and other legal techniques of dispossession. Marshall notoriously propounded the view that “discovery” was tantamount to conquest and that the United States had inherited Britain’s claim not only to rule but also to own vast portions of the continent.9 Wolfe took this breathtaking distortion of the colonial past as a description of early modern colonization rather than as a more modern ideological justification for contemporary practices of dispossession. More generally, he tended to exaggerate[s] the importance and misconstrue[s] the thrust of the arrogant pronouncements of sixteenth- and seventeenth-century imperialists, reading into their vague territorial pretensions a real program for replacing Natives with settlers. Apart from the fact that colonial charters and other early assertions of sovereignty were more likely to suggest the incorporation than the elimination of Indigenous peoples, these expressions of imperialist chutzpah cannot be taken as guides to what actually happened, any more than the Epistles of Saint Paul can explain the Crusades. In Wolfe’s wake, a whole school of settler colonial history has arisen with the aim of reexamining world history through this lens. This intellectual movement has spawned many valuable studies of modern colonialism, notably in applying the concept to the case of Israel as well as to numerous other nineteenth- and twentieth-century contexts. Insofar as more remote periods are concerned, however, results have been less impressive. A recently published handbook attempts to sum up the history of settler colonialism over the millennia and around the world through an array of essays on topics ranging from ancient empires to present-day New Caledonia.10 Readers of the volume learn about the Portuguese settlement of the islands of Madeira and the Azores (where there were no indigenous populations to eliminate) and about Roman colonia, which reinforced Roman presence on the edges of their multiethnic empire but which only pushed aside natives from small enclaves. Some of the premodern cases show affinities to settler colonialism à la Wolfe, but the contributors generally conclude that the fit is partial at best. The scholarship on display is very good but in most cases fairly conventional in approach, and it is hard to see what value settler colonial theory adds. In this volume and in other programmatic publications, definitions of settler colonialism are rather amorphous, generally lacking the theoretical bite of Wolfe’s early writings. In my own field, attempts to reconceive New France’s history on a settler colonial basis have led to lamentable results. Emboldened by theory and unencumbered by substantial knowledge of the topic, Edward Cavanagh argues that early New France needs to be understood as a “corporate” colony founded on the principle of terra nullius.11 That legal notion had long served as a justification for the colonization of Australia, so why not New France? Aware of, but undeterred by, Lauren Benton and Benjamin Straumann’s demonstration that this phrase was unheard of before the nineteenth century, Cavanagh constructs a new, ad hoc definition of the term by which it comes to stand for a failure to recognize “Aboriginal title” (which is actually a twentieth-century concept) linked to a willingness to settle land without purchase or cession. “The practice of terra nullius—whereby settlers acquire title, improve, and alienate, in a colonized region where no purchases, cessions, or conquests take place—was prevalent in New France.”12 In fact, the French never maintained that North America was empty; to the contrary, their program of colonization was all about incorporating Indigenous nations into their empire. In New France, as in New Spain, officials repeatedly proclaimed Indigenous lands inviolable, and the layered land tenures of Canada left considerable room for settler-Indigenous coexistence. That said, French settlers did indeed dispossess and displace Natives (if not on a large scale, given the demographics); however, purchases and cessions are neither here nor there. The practice of purchase and cession, initiated in some of the English colonies in the seventeenth century and later enshrined in the Royal Proclamation of 1763, was an instrument of unusually thoroughgoing dispossession.13 It was a quintessential settler colonial technique for utterly eliminating Indigenous property, and so the fact that the French took a less absolutist approach makes a poor justification for equating them with the colonizers of Australia. Unarguably, there are places and periods in the early modern history of North America where the “logic of elimination” was operative in both its material and its discursive aspects, where Natives were massacred and pushed aside to make way for colonists who proclaimed the land rightfully and exclusively theirs. For readers of this journal, it is hardly necessary to enumerate the sites along the Atlantic coast where colonists displaced Indigenous peoples and established jurisdictions, sovereignties, and property regimes for themselves, for the basic outlines of this story of appropriation and dispossession have long been familiar to historians. It is not entirely clear that labeling it an instance of settler colonialism adds much to our understanding of the phenomenon. More importantly, it is not obvious that settler colonial studies have much to contribute to the study—central to current work in the field—of the broader, continental context in which North American colonies took shape. The European invasion of America was extensive and variegated; settler colonies were but one dimension of the larger process and, until the nineteenth century, not the most spatially significant. North of New Spain and east of the narrow English and French settlements lay the vast bulk of the North American continent, Indigenous country that was neither conquered nor colonized. Yet even in the absence of the eliminationist workings of settler colonialism, it was strongly affected by the European presence, more so in some periods and regions than in others. Consider, for example, the large southeastern region often referred to as the “shatter zone,” where waves of violence and disease succeeded one another, beginning with Hernando de Soto’s entrada of 1539–42 and continuing through successive slave raids and the rise of militaristic coalescent societies that Robbie Ethridge and others have tracked.14 Trade with South Carolina, especially of guns for slaves, was the main driver of this destructive upheaval, and so, of course, colonization was centrally implicated. Something generally similar was occurring in the southwestern borderlands due to the presence of the colony of New Mexico.15 Only in a settler national narrative of the most providentialist sort could the emergence of these regional shatter zones be seen as simply paving the way for settlement and colonization. Further north, the Great Lakes region was similarly shaken by more than a century of wars and migrations following Haudenosaunee and French intrusions that started in the 1660s. This was a site where French, and later British, intruders played a transformative role through trade, religious evangelism, diplomatic negotiation, sex, and war. They did not conquer or rule—and they certainly did not settle, except in the tiniest enclaves—but they did exert influence and claim imperial sovereignty.16 Coming to terms with French sovereignty claims to the Great Lakes and Upper Mississippi requires us to recognize a more complex, less fully territorialized and exclusive concept of political authority than the modern definition that dominates Wolfe’s thinking on the subject. French imperial sovereignty here was a matter of infiltration rather than full takeover; certainly it had nothing to do with eliminating the Native, for it was entirely dependent upon that Indigenous presence. As was the case in the Southeast, there was a colony in the picture, in this case French Canada on the Saint Lawrence River, the source of commercial supplies, missionaries, coureurs de bois, and military officers. The whole pays d’en haut phenomenon was unimaginable in the absence of this European settlement (and vice versa). Consequently, it would be problematic to isolate the colonized colonies from the interior zones of influence and subject them to analysis as instances of settler colonialism. Canada and the pays d’en haut were inextricably connected. In this respect, New France was exceptional only in the scale of its imperial hinterland. All across the trans-Appalachian interior in the eighteenth century, Indigenous territories were affected by direct and indirect Euro-American infiltration, without conquest or real colonization. Settler colonial theory seems ill-equipped to deal with the complexities of these commercial/imperial incursions except as a prelude to settlement. To take full account of the larger continental field and the upheavals occasioned by European intrusion, we need to think about empires as well as settler colonies—or rather we need to consider settler colonialism as an aspect of early modern imperialism. Recent work on the history of empires underscores the wide variety of spatial practices employed in the creation of overseas empires in the early modern period, the nodes and networks, the reliance on sea-lanes and interior waterways to extend power and extract wealth.17 Colonial settlements were one element of a broader pattern of imperial expansion, especially prominent in the British American Empire. Settler colonial theory, valid and useful though it may be in certain settings, has the effect of isolating processes of colonization from larger processes of imperial penetration. It also has the effect of flattening long-term historical change by assimilating early modern colonialism to patterns of settlement and dispossession more characteristic of the nineteenth century. That said, let me acknowledge one of the important contributions of settler colonial theory to the practice of history. Regardless of the period we study, historians inhabit the modern world (call it postmodern if you prefer; it makes no difference to the present point), and many of us are non-Indigenous residents of settler colonial countries. Since, as Patrick Wolfe never tired of repeating, settler colonialism is “a structure not an event,” we are the beneficiaries of eliminationist practices that continue to victimize Native peoples.18 As citizens and as scholars, we should be mindful of our subject positionality in this respect. And surely that means scrutinizing the past for differences and transformations, not for pieces of evidence taken out of context to suggest an eternal always-already condition.

#### The commitment to megaships is the commitment to a logic of expansionist spatial capitalism

Chua 18, Phd Dissertation in Political Science University of Minnesota. (Charmaine, Containing the Ship of State: Managing Mobility in an Age of Logistics, <https://conservancy.umn.edu/bitstream/handle/11299/200214/Chua_umn_0130E_19452.pdf?sequence=1&isAllowed=y>}

Networked uncertainty: Megaport expansions and infrastructural power The complex demands that megaships place on their corresponding ports thus reveal the deeply networked interdependency of large-scale logistical infrastructure. Because shipping networks depend on unstable and dynamic ensembles of physical, social, and financial infrastructure that are conceived and constructed at different local and regional scales, the extent to which megaships can fulfill their projected economic outcomes depends on the ability of port cities to support their monstrous bodies. In this light, the viability of infrastructural investment in megaship building directly hinges on the production of related port and terminal infrastructure elsewhere. Even though port expansion and megaship orders are pursued in relative isolation through industry-specific logics of competition, the cascading effects triggered by megaship growth demonstrate that such initiatives are in fact deeply interdependent. In this sense, in concerning itself primarily with market-mediated and profit-oriented dynamics of demand and supply, neoclassical economics fails to account for the spatial and political dynamics that are brought into relation when aspects of accumulation - in this case, the growth of megaships - require a corresponding geographical expansion. What then changes if we turn our attention to the explicitly spatial dynamics of the megaship expansion, seeking to understand the geographical implications of economies of scale and their unevenly materialization in urban infrastructure? In this section, I employ David Harvey’s notion of the ‘spatial fix’ to show that whereas neoclassical economics expect a tendency toward equalization of various spaces, an attention to the geographical intensification and expansion of capital accumulation reveals instead the deeply uneven development involved in expanding the mobile networks of trade. Harvey’s notion of the ‘spatial fix’, littered throughout his oeuvre but first theorized in The Limits to Capital ([1982] 2006), broadly designates forms of spatial reorganization and geographical expansion that serve to manage - though only temporarily - the crisis tendencies inherent in capitalist over-accumulation. As he explains, capitalism’s growth imperative requires perpetual market expansion. In periods of over-accumulation, capitalists are faced with a surplus of labor and capital without the conceivable means for bringing them together profitably, and this moment constitutes a crisis that forces capitalism to make new room for itself in either temporal or spatial terms, and thus to seek out new horizons of investment. In Harvey’s terms, seeking these new horizons often requires geographical expansion into other territories and markets - a process that necessitates moving capital across long distances and finding ways to overcome those distances. Harvey builds on Marx’s claim in Capital Vol. 2 that the productive forces of capitalism include the capacity to overcome spatial barriers by intensifying the links to spatially distant territories and regions by investing and innovating in the areas of transport and communication (Harvey 2001a). Specifically, where transportation is concerned, the continuity of the circulation of capital depends on the ability to physically move goods around, and thus depends upon the creation of “an efficient, spatially integrated transport system organized around some hierarchy of urban centers” (Harvey 2005, 377). Speeding up the transportation of goods or the communication of information can drastically reduce the turnover time of industrial capital and accelerate the circulation of commercial and financial capital, allowing capitalists to reinvest money capital into the production process. Harvey refers to this process as “socially necessary turnover time” (Harvey 2001a, 320): the average time taken for capital to be reinvested for average profit rates under normal conditions of production and circulation. Crucially, capitalists seek to shrink this turnover time by making heavy investments in fixed kinds of capital such as infrastructure or transportation: Improving modes of transportation (that is, creating faster or more efficient modes of travel) helps to overcome spatial distance, which, together with the credit system, provides the temporal stepping stone for the “annihilation of space with time” (Marx 1973, 539). As such, the spatial fix refers to a long-term investment that provides potential escape from crisis by expanding markets into regions beyond the local, validating heavy investments in fixed infrastructure at the point of production by increasing relative surplus-value and growing effective demand by expanding the consumer base to new populations. The megaship is in this sense another technology in a long line of investments that aim to speed the turnover of capital by achieving economies of scale in the delivery of commodities to new markets. Yet this only covers one transportation node in a complex network of mobile infrastructures, some of which are more fluid than others. As Henri Lefebvre has shown, the production of space is central to the reproduction of capital and capitalist social relations (Lefebvre 1970, 1976). A crucial tension that thus emerges is the contradiction between the ‘fixity’ and ‘mobility’ of capital. Harvey explains: “[A] distinction must be drawn between fixed capital that is mobile and that which is not. Some fixed capital is embedded in the land (primarily in the form of the built environment or more broadly as ‘second nature’) and therefore fixed in place. This capital is “fixed” in a double sense (tied up in a particular object like a machine and pinned down in place). There is a relationship between the two forms. Aircrafts (a highly mobile form of fixed capital) require investments in immobile airport facilities if they are to function. The dialectic between fixity and motion then comes into play even within the category of fixed capital” (Harvey 2001b, 328). While Harvey uses the example of the aircraft, the megaship might perhaps serve as an even better exemplar of this tension: if capitalism has to fix space (in the immoveable structures of transportation networks inland and in the built environment of ports and railroads) in order to overcome space, the megaship represents precisely this mobile form of fixed capital that achieves the liberty of movement across the globe while reducing transport and communication costs through economies of scale. Importantly, the demand that megaships place on port infrastructures to expand their space and technologies of operation leads to one of the central contradictions of capital: that it has to build a fixed space necessary for its own functioning, only to destroy that space (and devalue the capital invested within it) at a later point in order to make way for newer spatial fixes. “Capitalist development,” in Harvey’s explanation, “has to negotiate a knife-edge path between preserving the values of past capital investments in the built environment and destroying these investments in order to open up fresh room for accumulation” (Harvey 2001, 247). In this way, the spatial fix presupposes not an equalization of various spaces, but rather their uneven and differentiated development. Neil Smith and David Harvey have argued that infrastructure is a central force in enabling, expressing, and reproducing the uneven processes of development. The “frantic geographical expansion” of accumulation, Smith argues, “requires a continuous investment of capital in the creation of a built environment for production” (Smith 2008, 159). Here, infrastructures of mobility - “roads, railways, factories, fields, workshops, warehouses, wharves, sewers, canals, power stations” (ibid) - all function to concentrate capital and labor in metropolitan areas, while taking place alongside more “sprawling far-flung development” in which “roads and railways litter a landscape that has been indelibly and irreversibly carved out according to the dictates of capitalism” (Harvey 1999, 373). Under capitalism, Harvey shows that there is an unrelenting struggle in which capital has to build a physical landscape or infrastructure for itself, that is appropriate to its needs for accumulation at a moment in time. However, as soon as changing technologies or geographies of accumulation supersede the need for that infrastructure, capital finds that it only has “to destroy it, usually in the course of crises, at a subsequent point in time.” In this sense, while spatial fixes leave a very physical trace in the landscape with heavy infrastructure, these forms of fixed capital are constantly superseded in the need for endless expansion. Overall, Harvey stresses, this means that there is “no long-run ‘spatial fix’ to capitalism’s internal contradictions” (Harvey 2001a, 307).

#### Indigenous advocates seek legal actions to prevent climate change

Warner 16 Elizabeth Ann Kronk Warner University of Kansas School of Law, Elizabeth Ann Kronk Warner, Everything Old Is New Again: Enforcing Tribal Treaty Provisions to Protect Climate Change-Threatened Resources, 94 Neb. L. Rev. 916 (2015) : https://digitalcommons.unl.edu/nlr/vol94/iss4/4

In the United States, tribes are uniquely threatened by the negative impacts of climate change. Tribes and individual Indians are perhaps more vulnerable to such impacts because of legal, cultural, and spiritual connections to the land. Given such vulnerabilities, tribal advocates are increasingly looking for legal tools that may help diminish the threat to tribal resources from climate change. One potential legal tool may be consideration of a tribe’s treaty rights based on treaties with the United States. Historically, such treaty rights proved to be valuable tools for protecting resources such as water rights and usfructuary rights. The Article considered for the first time whether such rights might be equally protective in the climate change context.

#### Decolonization demands engagement with the state

Grande 7, (Sandy Grande, 2007, Critical Pedagogy: Where are We Now?,” pp. 330-331)

Andre Lorde’s essay, The Masters Tools Not Dismantle the Master's House, is one of the most quoted essays in academic history and, I would also venture to say, one that needs rethinking. While it is self-evident that indigenous knowledge is essential to the process of decolonization, l would also argue that the Masters tools are necessary. Otherwise, to take Audrey Lorde seriously means to create a dichotomy between the tools of the colonizer and those of the colonized. Such a dichotomy leaves the indigenous scholar to grapple with a kind of “Sophie’s Choice" moment where one feels compelled to choose between retaining their integrity (identity) as a Native scholar by employ in only indigenous knowledge or to “sell out” and employ the frames of Western knowledge. What does it mean for indigenous scholars to engage Western knowledge? Does it signify a final submission to the siren’s song, seducing us into the colonialist abyss with promises of empowerment? Or is it the necessary first step in reclaiming and decolonizing an intellectual inquiry room-of our own.’ Such questions provoke beyond the bounds of academic exercise, suggest instead the need for an academic exorcism. The demon to be purged is the specter of colonialism. As indigenous scholars, we live within, against` and outside of its constant company` witnessing its various manifestations as it shape shifts its way into everything from research and public policy to textbooks and classrooms. Thus. the colonial tax of Native scholars not only requires a recognition of personal identity but also an analysis of how whole nations get trans- or (dis) figured when articulated through Western frames of knowing. As Edward Said observes. “institutions, vocabulary, scholarship, imagery, doctrines, even colonial bureaucracy and colonial styles” all support to the Westem discourse" (Said, 1985, p, 2). ln other words, is it possible to engage the grammar of empire without replicating its effects.’ At the same time indigenous entertain these ruminations, Native communities continue to be impacted and transformed by the forces of colonization, rendering the “choice” of whether to employ Western knowledge in the process“ of defining indigenous pedagogies essentially moot. ln other words, by virtue of living in this world and having to negotiate the forces of colonization, indigenous scholars are given no choice but to know, understand, and acquire the grammar of empire as well as develop the skills to contest it. The relationship between the two is not some liberal dream of multicultural harmony but rather the critical and dialogical tension between competing moral visions.

#### Warming magnifies settler impositions

Whyte 16. Kyle Powys Whyte, Michigan State University Timnick Chair in the Humanities, Associate Professor of Philosophy and Community Sustainability In Press. “Is it Colonial Déjà Vu? Indigenous Peoples and Climate Injustice” November 2016. . Humanities for the Environment: Integrating Knowledges, Forging New Constellations of Practice. Edited by Joni Adamson, Michael Davis, and Hsinya Huang. Earthscan Publications. Pages 88-104. ckm-eg.

Climate change fits succinctly within this pattern. For this reason, many contemporary Indigenous peoples are concerned about their vulnerability, or susceptibility to be harmed, by impacts associated with the observed rise of global average temperature, or climate change. That is, they are concerned about climate risks as they are increasingly confronted by change stemming from the carbon intensive economic activities of settler and other colonial societies. Climate change impacts can be seen through the lens of forms of containment (among other forms of domination), this time arising from settler contributions to increasing the concentration of greenhouse gases in the atmosphere. Warming waters and receding glaciers affect the fish habitats in Indigenous territories all over the world, such as on the Pacific coast of North America where many Tribal nations harvest salmon for economic and cultural purposes (Bennett et al.). Sea level rise is pushing people living in the Village of Kivalina in Alaska, the Isle de St. Charles in the Gulf of Mexico, and the Carteret Atoll in Papua New Guinea to relocate (Maldonado et al.). In these cases we see 8 both shrinking habitats and relocation occurring again. The Loita Maasai peoples in Africa face droughts that affect the rain conditions required for performing many of their ceremonies (Saitabu). Indigenous women, girls and two spirit persons in the Arctic and Great Plains regions are subject to greater sexual violence, abuse and trafficking as work camps for oil and gas extraction, such as ‘fracking,’ bring in male contractors to profit from the resources found within Indigenous territories (Sweet). Climate change impacts and drivers represent another form of inflicted anthropogenic environmental change. Scientific reports confirm many of the threats just described. In 2014, the U.S. National Climate Assessment states that Indigenous peoples face the ‘loss of traditional knowledge in the face of rapidly changing ecological conditions, increased food insecurity… changing water availability, Arctic sea ice loss, permafrost thaw, and relocation from historic homeland’ (Bennett et al. 2). The Intergovernmental Panel on Climate Change’s Fifth Assessment Report claims Indigenous peoples face ‘challenges to post-colonial power relations, cultural practices, their knowledge systems, and adaptive strategies’ (Adger et al.). Indigenous peoples’ own descriptions of climate risk indicate that settler and other colonial societies are imposing rapid environmental change that generates otherwise preventable harms. The Mandaluyong Declaration quotes Miskito women in the Americas who say, in response to changing environmental conditions, that “We now live in a hurry and daughters do not cook as grandmothers… We do not catch fish as before, do not cook as before; we cannot store food and seeds as before; the land no longer produces the same; small rivers are drying up… I think that along with the death of our rivers, our culture dies also.” (300-01). For many Indigenous peoples, these rapid changes are experienced as a continuation of settler colonialism and other forms of colonialism that they have endured for many years. For we have experienced these types of environmentally-related impacts before— from dietary change to relocation to sexual violence—though caused by different factors, such as multiple settler institutions of containment. Though institutions of containment represent just one limited example of a much more complex history with settler colonialism. Anthropogenic climate change is of a piece with forms of nonconsensual and harmful environmental change inflicted on our societies in the past. Some Indigenous peoples look at futures of 9 rampant climate injustice as looking to the cyclical history of settler and other colonial inflictions of anthropogenic environmental change on Indigenous peoples in order to instantiate erasure. Yet what is more insidious about climate injustice against Indigenous peoples is that the settler institutions such as those of containment, that inflicted environmental change in the past, are the same institutions that fostered carbon-intensive economic activities on Indigenous territories. That is, containment strategies, such as removal of Indigenous peoples to reservations or the forced adoption of corporate government structures, all facilitated extractive industries, deforestation and large-scale agriculture. What is more, and as I will discuss in more detail in later sections, these are the same institutions that today make it hard for many Indigenous peoples to effectively cope with climate change impacts. In this way, climate injustice against Indigenous peoples refers to the vulnerability caused by ongoing, cyclical colonialism both because institutions facilitate carbon-intensive economic activities that produce adverse impacts while at the same time interfering with Indigenous people’s capacity to adapt to the adverse impacts

#### Climate change represents another removal – the disproportionate effects on reservation land and the denial of federal disaster assistance condemns natives to disparate climate impacts

Flavelle 2021

Christopher Flavelle and Kalen Goodluck, New York Times, “Dispossessed, Again: Climate Change Hits Native Americans Especially Hard” July 1, 2021 <https://www.nytimes.com/2021/06/27/climate/climate-Native-Americans.html>

In Chefornak, a Yu’pik village near the western coast of Alaska, the water is getting closer.

The thick ground, once frozen solid, is thawing. The village preschool, its blue paint peeling, sits precariously on wooden stilts in spongy marsh between a river and a creek. Storms are growing stronger. At high tide these days, water rises under the building, sometimes keeping out the children, ages 3 to 5. The shifting ground has warped the floor, making it hard to close the doors. Mold grows.

“I love our building,” said Eliza Tunuchuk, one of the teachers. “At the same time, I want to move.”

The village, where the median income is about $11,000 a year, sought help from the federal government to build a new school on dry land — one of dozens of buildings in Chefornak that must be relocated. But agency after agency offered variations on the same response: no.

From Alaska to Florida, Native Americans are facing severe climate challenges, the newest threat in a history marked by centuries of distress and dislocation. While other communities struggle on a warming planet, Native tribes are experiencing an environmental peril exacerbated by policies — first imposed by white settlers and later the United States government — that forced them onto the country’s least desirable lands.

And now, climate change is quickly making that marginal land uninhabitable. The first Americans face the loss of home once again.

In the Pacific Northwest, coastal erosion and storms are eating away at tribal land, forcing native communities to try to move inland. In the Southwest, severe drought means the Navajo Nation is running out of drinking water. At the edge of the Ozarks, heirloom crops are becoming harder to grow, threatening to disconnect the Cherokee from their heritage.

Compounding the damage from its past decisions, the federal government has continued to neglect Native American communities, where substandard housing and infrastructure make it harder to cope with climate shocks.

The federal government is also less likely to help Native communities recover from extreme weather or help protect them against future calamities, a New York Times review of government data shows.

Interviews with officials, members and advisers at 15 federally recognized tribes portray a gathering climate crisis and a test of the country’s renewed focus on racial equity and environmental justice.

Many tribes have been working to meet the challenges posed by the changing climate. And they have expressed hope that their concerns would be addressed by President Biden, who has committed to repairing the relationship with tribal nations and appointed Deb Haaland, the first Indigenous cabinet secretary, to run the Interior Department. But Mr. Biden has announced few specific policies or actions to directly reduce the climate risk already facing Native communities, and Ms. Haaland’s office declined repeated requests for an interview.

“The stakes are very, very high,” said Fawn Sharp, president of the National Congress of American Indians. “We’re running out of time.”

Forced Off Their Land, Again

The Quileute Nation is a collection of about 135 homes on a narrow slice of land at the edge of the Olympic Peninsula that juts into the Pacific, about 100 miles west of Seattle.

As temperatures rise, the atmosphere holds more water, producing more frequent and intense storms. High winds now regularly knock out the electricity, while homes along the main street are vulnerable to flooding. The single road that connects the community to the outside world is often rendered impassable by water.

“The village is 10 to 15 feet above sea level,” said Susan Devine, a project manager who is working with the Quileute. During major storms “those waves are bigger than you,” she said.

Hundreds of years ago, the reservation was a fishing village, among many locations used by the Quileute as they moved according to the demands of the weather.

That changed in 1855 when a treaty stripped the tribe of most of its land; President Grover Cleveland later issued an executive order confining the Quileute to a single square mile — all of it exposed to flooding.

“No one chose to be in a seasonal fishing area year-round,” Ms. Devine said.

The resulting vulnerability has pushed the tribe to pursue a solution that few non-Native towns in the United States have seriously considered: Retreating to higher ground.

“Climate change has forced us to make the heart-wrenching decision to leave the village,” Doug Woodruff, chairman of the Quileute Tribal Council, said in a December statement. “Without a cohesive national and international strategy to address climate change, there is little we can do to combat these impacts.”

Through a spokeswoman, Mr. Woodruff and other members of the council declined repeated requests to be interviewed.

In 2012, Congress gave the tribe permission to relocate inside the adjacent Olympic National Park. But without a tax base to pay for its move, the tribe sought federal money. Progress has been slow: The Quileute received about $50 million in grants to build a new school farther from the coast, but the total cost to relocate homes and other facilities could be two or three times that much, according to Larry Burtness, who manages federal grant applications for the Quileute.

Forty miles south, the Quinault tribe has been working on its own plan to retreat from Taholah, the reservation’s main town, for almost a decade. Tucked between a driftwood-strewn beach and a coastal rainforest, Taholah is exposed to storms, flooding and frequent power outages. That tribe has also struggled to get federal help.

“There’s no single source of revenue, at a state level or congressionally, to undertake these kinds of projects,” said Ms. Sharp, who was president of Quinault Nation until March.

A Struggle for Federal Aid

The federal government offers help to communities coping with the effects of climate change. But Native Americans have often been less able to access that help than other Americans.

“We’re the most disproportionately impacted by climate, but we’re the very least funded,” said Ann Marie Chischilly, executive director of the Institute for Tribal Environmental Professionals at Northern Arizona University.

The Federal Emergency Management Agency is less likely to grant requests for aid from native tribes recovering from disaster, compared to non-Native communities, according to FEMA data.

Native Americans are also less likely to have flood insurance, making it harder to rebuild. Of 574 federally recognized tribes, fewer than 50 participate in the National Flood Insurance Program, according to a review of FEMA data.

That’s partly because the federal government has completed flood maps for just one-third of federally recognized tribes, compared with the vast majority of counties. Flood maps can help tribal leaders more precisely understand their flood risks and prompt residents to purchase flood insurance.

But insurance premiums can be prohibitively expensive for Native Americans.

Individual households on Native lands are also less likely to get federal help girding for disasters. Of the 59,303 properties that have received FEMA grants since 1998 to prepare for disasters, just 48 were on tribal lands, according to Carlos Martín, a researcher at the Urban Institute.

FEMA said it is committed to improving tribal access to its programs.

Chefornak’s efforts to relocate its preschool illustrate the current difficulties of dealing with the federal government.

While FEMA offers grants to cope with climate hazards, replacing the school wasn’t an eligible expense, according to Max Neale, a senior program manager at the Alaska Native Tribal Health Consortium, who helped Chefornak search for federal aid.

The Department of Housing and Urban Development has a program to pay for infrastructure on tribal lands, but the maximum amount available wasn’t enough for a new school, and the agency wouldn’t grant money until the village had found other ways to make up the difference, Mr. Neale said.

HUD declined to comment on the record.

Replacing the preschool would only begin to address Chefornak’s troubles. Some two dozen homes need to be relocated, potentially costing more than $10 million, according to Sean Baginski, an engineer working with the village. And Chefornak is just one of more than 100 Native villages in Alaska alone that are exposed to significant climate risks.

“If the intent is for the government to find a way to fund this stuff,” Mr. Baginski said, “now would be a good time.”

Living Without Water

Damian Cabman, a member of the Navajo tribe, filled buckets of water to take home at the Bataan water loading station in Gallup, N.M. Many tribe members had relied on wells that have run dry with climate change.

Damian Cabman, a member of the Navajo tribe, filled buckets of water to take home at the Bataan water loading station in Gallup, N.M. Many tribe members had relied on wells that have run dry with climate change. Credit...Kalen Goodluck for The New York Times

Twice a week, Vivienne Beyal climbs into her GMC Sierra in Window Rock, a northern Arizona town that is the capital of Navajo Nation, and drives 45 minutes across the border into New Mexico. When she reaches the outskirts of Gallup, she joins something most Americans have never seen: a line for water.

Ms. Beyal’s destination is a squat concrete building that looks like a utility shed, save for the hoses that extend from either side. Once there, she waits as much as half an hour for her turn at the pump, then fills the four 55-gallon plastic barrels in the back of her truck.

The facility, which is run by the city of Gallup, works like an air pump at a gas station: Each quarter fed into the coin slot buys 17 gallons of water. Most of the people in line with Ms. Beyal are also Navajo residents, crossing into New Mexico for drinking water. “You can show up whenever you want,” she said. “As long as you can pay for it.”

Ms. Beyal has lived in Window Rock for more than 30 years and once relied on the community well near her home. But after years of drought, the water steadily turned brown. Then last year, it ran dry. “It’s on us to get water now,” she said.

Like much of the American West, Navajo Nation, the largest tribe in the country, has been in a prolonged drought since the 1990s, according to Margaret Hiza Redsteer, a professor at the University of Washington.

“As snowfall and rain levels have dropped, so have the sources of drinking water,” Dr. Redsteer said. “Surface streams have disappeared, and underground aquifers that feed wells are drying up. Conditions are just continuing to deteriorate.”

The federal government says the groundwater in the eastern section of Navajo Nation that feeds its communal wells is “rapidly depleting.”

“This is really textbook structural racism,” said George McGraw, chief executive officer of DigDeep, a nonprofit group that delivers drinking water to homes that need it. Navajo Nation has the greatest concentration of those households in the lower 48 states, he said.

The federal government is working on a billion-dollar project to direct more water from the San Juan River to a portion of the reservation, but that work won’t be finished until 2028.

The drought is also changing the landscape. Reptiles and other animals are disappearing with the water, migrating to higher ground. And as vegetation dies, cattle and sheep have less to eat. Sand dunes once anchored by the plants become unmoored — cutting off roads, smothering junipers and even threatening to bury houses.

“We’ve got to adapt to these conditions,” said Roland Tso, an official in the Many Farms area of Navajo Nation, where high temperatures hovered near 100 degrees for much of June. “We’re seeing the weather going crazy.”

New Administration, New Promises

As a presidential candidate last year, Mr. Biden highlighted the connection between global warming and Native Americans, saying that climate change poses a particular threat to Indigenous people.

But Mr. Biden’s most ambitious climate proposal, written into his $2 trillion infrastructure plan, included just two references to tribal lands: unspecified money for water projects and relocation of the most vulnerable tribes.

A White House spokesman, Vedant Patel, declined to comment on the record.

Ms. Haaland’s role as interior secretary gives her vast authority over tribal nations. But the department declined to talk about plans to protect tribal nations from climate change.

Instead, her agency provided a list of programs that already exist, including grants that started during the Obama administration.

“At interior, we are already hard at work to address the climate crisis, restore balance on public lands, and waters, advance environmental justice, and invest in a clean energy future,” Ms. Haaland said in a statement.

Heritage at Risk

Beyond the threats to drinking water and other basic necessities, a warming planet is forcing changes in the ancient traditions.

In Northern California, wildfires threaten burial sites and other sacred places. In Alaska, rising temperatures make it harder to engage in traditions like subsistence hunting and fishing. And on Cherokee Nation land, at the northeastern corner of Oklahoma, changing precipitation and temperature patterns threaten the crops and medicinal plants that connect the tribe with its past.

In 1830, President Andrew Jackson signed the Indian Removal Act, which resulted in the forced relocation of five tribes, including the notorious march of the Cherokee, from the Southeastern United States to Oklahoma, known as the Trail of Tears.

Despite losing their land, the Cherokee retained part of their culture: Heirloom beans, corn, and squash, as well as a range of medicinal plants such as ginseng, which they continued to grow in the temperate highlands at the eastern tip of their reservation.

“There was certainly a lot lost, but there was also a lot that was able to be maintained,” said Clint Carroll, a professor at the University of Colorado and a citizen of Cherokee Nation.

Now, drought and heat make it harder to grow the plants and crops of their ancestors.

“It can be seen as another removal,” Dr. Carroll said. But this time, he said, “Cherokee people aren’t moving anywhere — it’s the environment that’s shifting.”

In March, Pat Gwin, senior director for Cherokee Nation’s environmental resources group, showed a visiting journalist the tribe’s heirloom garden in Tahlequah, an enclosed plot the size of a tennis court where traditional squash, tobacco, corn, beans and gourds grow.

Seeds from the plants are distributed to Cherokee citizens once a year, a link to centuries of culture and existence that is dimming.

“Our access to and use of the land is so tied up with identity,” said Anton Treuer, professor of Ojibwe at Bemidji State University in Minnesota. “It’s who we are as a people.”

#### Ontology focus bad – imagined contingent futures change the conditions of possibility but don’t rely on linear time to produce material benefits.

Jessica Hurley 17, Assistant Professor in the Humanities at the University of Chicago, “Impossible Futures: Fictions of Risk in the Longue Durée”, Duke University Press, https://read.dukeupress.edu/american-literature/article/89/4/761/132823/Impossible-Futures-Fictions-of-Risk-in-the-Longue

Birkerts’s dismissal of a decolonial future for North America as something “so contrary to what we know both of the structures of power and the psychology of the oppressed that the imagination simply balks” (41) is consistent with a much longer history of colonial rhetoric and practice that rejects Native land claims as impossible or unrealistic. The Supreme Court’s invocation in their 2005 City of Sherrill v. Oneida Nation decision of the “impossibility doctrine” that governs the “impracticability of returning to Indian control land that generations earlier passed into numerous private hands” demonstrates the ongoing power of a white-defined realism to distinguish possible from impossible actions with regard to its own practices of settler colonialism (quoted in Rifkin 2009, 4). In this view, for the United States to abide by the terms of its treaties with Native nations is unthinkable; it falls beyond the limits of plausibility that define possible actions. And as Mark Rifkin has argued (ibid.), the idea of Native sovereignty is not just unrealistic but an epistemological challenge to the real itself, to the construction of reality that maintains life as we know it in the United States. The “sadder realism” called for by Buell must not, therefore, be taken as the neutral generic option in dealing with risk, but rather recognized as one which relies on standards of verisimilitude and plausibility that perpetuate the oppression of indigenous communities whether they are applied directly to nuclear risk or to the legal standards that define the limits of Native self-determination.¶ Redefining the real, “draw[ing] attention to the possible by showing the contingent dimension of the actual” (Revel 2009, 52), thus becomes a strategy of decolonization. Realism, in this context, is a self-fulfilling prophecy: the return of Native land is regarded as impossibly implausible by the United States, and so it fails to appear in the imaginable scenarios at key moments of legal and political decision-making and does not come to pass. Consequently, as Ward Churchill writes, all “anti-colonial fighters…accepted as their agenda a redefinition of reality in terms deemed quite impossible within the conventional wisdom of their oppressors”; any decolonial movement will require a counter-realist political and aesthetic strategy (1992, 174). Almanac suggests that apocalypse remains a potent force in redefining reality against colonial norms even as the novel re-forms our traditional understanding of nuclear apocalypse. No longer sudden and total, Almanac gives us the longue durée apocalypse of nuclear waste, an apocalypse defined not by the sudden absence of the future but rather by the impossibility of constructing any mechanism by which we might imagine a specific future or futures.¶ Such an apocalypse is neither a sudden ending nor a revelation of eternal truth but rather a narratological shift that transfigures the present through a radical futurelessness. Apocalypse stands, in Almanac, against the futurological equivalent of what Michael Bernstein (1994) has critiqued as “backshadowing”: the historiographical tendency to construct the past backwards from the present, occluding the contingency of the present, limiting the presents-that-could-havebeen to one, and including in the historical narrative only those factors that gave rise to this specific outcome. A predetermined future, as Bernstein’s subtitle Against Apocalyptic History¶ suggests, does exactly the same thing: it binds the present to the future with a single unfrayed rope and makes the present the necessary, unchangeable precursor to a known future. These¶ imagined futures, despite their virtuality, have significant material effects in the present, making¶ certain things possible and rendering others unthinkable, as we saw at the WIPP where a¶ plausible set of future scenarios allowed the repository to open and foreclosed the possibility of¶ shutting down nuclear manufacturing. In an indigenous context, meanwhile, the historical¶ determinism instantiated by the imagined futures of the nuclear state has rendered Native nations¶ paradoxically futureless, since indigenous lands and communities are by far the most damaged¶ by the ongoing mining, processing, testing, and dumping practices of the nuclear-militaryindustrial¶ complex.17¶ Apocalypse, then, becomes visible in Silko’s novel not as a model of linear historical determinism, as in the Genesis-to-Revelation teleology that has long subtended Christian historiographies, but rather as a narrative form that explodes such determinism to reveal the contingent nature of the present and allow for other possibilities in both the present and the future. The epistemological challenges to human understanding posed by the deep time of nuclear waste are taken up by Silko to reveal not simply the multiplicity of possible futures (a conceptual leap which, as Annie McClanahan (2009) and R. John Williams (2016) have shown, was made within the nuclear-military-industrial complex and has been profitably taken up by global corporations to deeply conservative ends), but the absolute impossibility of imagining any specific future at all.¶ Exploding the reservoir of probable futures that traditionally structures the novel form (Kermode [1968] 2000) transforms the novel’s present in much the same way that, in radical historiography, telling a different story about the past does. In contrast to the ineluctable presentism that defines the nuclear complex at the WIPP and beyond, the Native/nuclear temporalities that the snake occupies are those of a longue durée that spirals and returns from both the past and the future, in which “these days and years were all alive, and all these days would return again” (Almanac 247). The qualitatively different future whose possibility is so vigorously unimagined at the WIPP is, in Almanac, an inescapable future that is, in the novel’s non-linear timeframe, also a part of the present. Actions and objects have a different realityeffect in this light. When macaws speak of revolution, when opals bleed and grant visions, when ghosts weigh down a donkey, none of these things are unrealistic or even magically realistic. Rather, they are manifestations of deep time temporalities, simultaneously Native and nuclear, producing impossible juxtapositions of space-time (dead riders on a live mule, the future projected on an opal screen) within the Western chronology of the novel form. Silko, bound to damaged and damaging futures by the nuclear complex as it intersects with the other histories of damage left in the wake of colonial modernity, uses apocalypse to transfigure the present: to see the other possibilities that reside in it and to couple those possibilities to their own pasts and their own futures, constructing not only a transfigured instant but wholly transfigured timelines, worlds with a solidity of their own.

#### Decolonization is too vague; their “structural claims” make it impossible

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For all its attached redemptive prospects and radical possibilities, it is important to emphasise that the meanings of decolonisation as both a concept and political project are not just broad, but also multifaceted and highly contested. What it means to ‘undo’ colonialism is deeply contextual (Jansen and Osterhammel, 2017). While colonialism can be defined broadly as a relationship of domination in which a people or territory is politically and economically subjugated to a foreign power, actual colonial situations vary quite widely from each other, depending on, among others, the particular political systems instituted to maintain control, types of exploitation and expropriation (resources, labour, plantations), relationship between the metropole and colony and patterns of migration they compel (slavery, settlement). Projects of decolonisation accordingly take different forms even if they are united by the common concern of ending or overturning structures of domination instituted by colonialism, which has historically taken place mostly through the withdrawal of colonial powers and achievement of independence for the colonised (Buchanan, 2010). Decolonisation speaks to the aspiration of self-rule and its concomitant critique of colonialism as the ‘systematic denial of freedom’ (Kohn and McBride, 2011: 6) and is therefore entangled with a variety of concerns, namely, self-determination, justice, equality, freedom and solidarity against colonialism and imperialism. As Todd Shepherd (2006: 3–4) writes, decolonisation is ‘a much wider concept than the mere “winning of Independence” or “transfer of power”… It entails the exploration of dreams, the analysis of struggles, compromises, pledges and achievements, and the rethinking of fundamentals’. Traditional literature on decolonisation approached it in terms of the historical process that began in the immediate aftermath of World War Two in which countries previously under (typically European) foreign rule transitioned to constitutional independence (Buchanan, 2010). Decolonisation was one of the most significant developments of the twentieth century, radically changing the face of the globe from one in which a small number of empires had dominion over some 80% of the earth’s surface to an international order based on the principle of self-determination and made up of ostensibly independent states (Hopkins, 2008). Scholars in this tradition have done much to illuminate the widereaching structural transformations that accompanied decolonisation, including the emergence of anti-colonial and national liberation struggles at the turn of the century, shifts in world economy that made the maintenance of traditional forms of Empire increasingly difficult, the development of a ‘Third World’ political project and the institutionalisation of human and civic rights principles that rendered systems based on ideas of racial and ethnic superiority less viable (Hopkins, 2008: 216). Yet, the focus on transition has been critiqued for its narrowness insofar as it seems to take for granted the meanings of selfdetermination and temporally restricts decolonisation to the moment of national liberation. Postcolonial scholars, among others, have been at the forefront of this charge, arguing that decolonisation did not produce a postcolonial world per se, but rather one that continues to be shaped in significant ways by the legacies of European colonialism (e.g. Spivak, 1999). As Ella Shohat (1992) has argued, there is no way of turning back from the world colonialism set in play nor did colonial modes of domination end with the formal period of decolonisation. From this broadened perspective, decolonisation is the difficult task of tracing the economic, political, social, cultural, relational and linguistic consequences of colonialism and is therefore also an ongoing imaginative project seeking ‘a new form of consciousness and way of life’ (Pieterse and Parekh, 1995: 3) beyond the coloniality of modern modes of culture, identity and knowledge more generally. While the transitional focus of conventional scholarship is quite illuminating in the contexts of Africa and Asia, for example, it furthermore excludes a great many decolonisation efforts that have taken place and continue to take place in other regions. This includes countries that remained dependent or only achieved semi-independence as dominions, decolonising projects carried out in territories never formally under colonial rule (the Iranian Revolution, for instance) and – as is particularly important to our discussion here – settler colonies that only partially decolonised, whether by way of loosening ties with the Motherland or achieving independence, but which continue to dominate substantial indigenous populations (Hopkins, 2008). There is a significant lacuna in the decolonisation literature when it comes to settler colonialism, which has increasingly been recognised as a distinct form of colonial practice – and one that is particularly resistant to decolonisation (Veracini, 2007). As the transfer of an exogenous population to a territory they intend to claim as their permanent home, settler colonialism establishes quite a different structural relationship to ‘traditional’ forms of colonialism, especially when settler colonial projects succeed in creating a state (Bateman and Pilkington, 2011). Rather than governing native peoples in order to extract resources for economic gain, settler colonisers instead aim to ‘seize their land and push them beyond an ever-expanding frontier of settlement’ (Elkin and Pedersen, 2005: 2). For Patrick Wolfe (2006), what distinguishes settler colonialism is thus that it is guided by a logic of elimination as opposed to a logic of exploitation, wherein the eradication of indigenous presence is essential to the success of settler colonial projects. The primacy of national liberation in the literature makes it especially difficult to imagine, let alone theorise, decolonisation in many settler colonial contexts. Whereas some settler colonial projects like Algeria and Kenya saw decolonisation by way of a mass settler exodus, paving the way for the establishment of independent states, the more successful ones established permanent settler communities (e.g. Northern Ireland) or their own states (e.g. Australia, Canada, the United States) which preclude a simple transition from foreign rule to sovereign status (Veracini, 2007). This is of course not to say that self-determination of the type aspired to by anti-colonial national movements was an easy or even necessarily achievable task. As Kohn and McBride (2011) suggest, in pursuing the dream of self-rule, anti-colonial thinkers had to reckon with the difficulties of articulating alternative political foundations that would make for a genuinely self-determining polity, an enormous task which demands decolonising of minds as much institutions and territory (see Fanon, 2001[1963]). Decolonisation must pursue a convincing ‘break’ between a colonial past and a postcolonial future ‘through decisive action in the present’; it must also ‘seek to reinterpret the past in such a way that it may help in the present and future struggle for self-rule’ (Kohn and McBride, 2011: 19). While these pursuits are invariably contingent, partial and commonly symbolic, national liberation struggles very often provide the fodder for a reinterpreted past that is robustly positive and the establishment of an independent state serves as that aspired for ‘break’. Settler colonial contexts, especially those where indigenous peoples live as minorities in settler states, make these types of symbolic transitions challenging, as they do the imagining of postcolonial alternatives. If the narrative structure of colonialism is circular (leave, stay, return), making that symbolic break possible, settler colonial narratives are linear insofar as the settler comes to stay and the line continues on unbroken (Veracini, 2007). As Ann Curthoys (1999: 288) writes, settler colonial spaces are simultaneously colonial and postcolonial, colonising and decolonising, which makes decolonisation temporally ambivalent at best. Lorenzo Veracini (2007) suggests that there are only two alternatives to settler evacuation for decolonising settler colonial forms and it is dubious whether one of these counts as decolonisation at all: the decolonisation of relationships through ‘the promotion of various processes of Indigenous reconciliation’ or the maintenance of the status quo ‘with the explicit rejection of the possibility of reforming the settler body politic’. Again, what the former might mean[s] is often vague, and historically it is the decolonisation of relationships that is hardest to come by considering the psychological consequences of colonialism for coloniser and colonised alike (Memmi, 1965). Like traditional forms of colonialism, settler colonialism was legitimated by a belief in the colonised’s racial and cultural inferiority. However, the specific settler colonial pursuit of land seizure compels additional stereotypes of native peoples or unique applications of existing colonial ones, wherein their supposed inferiority makes them ill-equipped to develop that land (premodern, nomadic, barbaric) or, alternatively, voids any claims to ownership (terra nullius). In other words, settler colonialism is as much premised on the denial of indigenous peoples as a political constituency with rights to land as it is their purported inferiority, which is typically enshrined in their status as second-class citizens with all the economic, cultural and social disadvantage this entails (Bateman and Pilkington, 2011: 3). Given that settler societies are marked by ‘pervasive inequalities, usually codified in law, between native and settler populations’ which preserve political and economic privileges for the latter (Elkin and Pedersen, 2005: 4), decolonising relationships demands structural changes that often encounter significant resistance from settler constituencies. Likewise, it requires a reckoning with historical injustice – specifically violence and conflict at the colonial frontier – that is challenging for settler states and populations because it opens questions of settler identity, privileges, legitimacy and reparations and expressly seeks to scrutinise disavowed and long suppressed histories. Settler colonial decolonisation is thus complicated by a multitude of hurdles, which bring the postcolonial caution of the impossibility of a ‘break’ into stark relief. Kohn and McBride (2011) suggest that decisive action in the present is essential to decolonisation, but in settler colonial contexts this is hindered by power discrepancies between settler and native constituencies, a general lack of settler political will to enter into difficult processes of historical introspection as well as the constraining of Indigenous claims within the settler state. Indeed, even a commitment to a postcolonial polity as expressed through processes of historical reconciliation often encounters strong resistance when it comes to judicial, constitutional or legislative change genuinely decolonised relationships would demand. Nevertheless, even if it remains difficult to comprehensively imagine the decolonisation of ‘settler societies vis-à-vis Indigenous constituencies’ (Veracini, 2007), the central question must be how to construct political foundations which simultaneously acknowledge ‘the practices of racism, violence and subordination’ (Kohn and McBride, 2011: 18) that preceded them while also paving the way for a postcolonial future in which natives and settlers are equal parties and share the right to narrate the polity. Equality, freedom and justice may come from legally enshrining Indigenous rights to self-determination or, alternatively, doing away with the categories of ‘settler’ and ‘native’ altogether (Mamdani, 2001). What shape such efforts are likely to take depends, among others, on the ‘size and tenacity’ of Indigenous populations as well as the power of the settler constituency (Elkin and Pedersen, 2005: 3, 6). But we would suggest that the measure to which they may be thought of as decolonising rests on the robustness of the relationship they envision and the space they carve for equal membership in and to a postcolonial polity.

#### The alt’s solution is too overarching and shuts down Indigenous futures

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

Decolonizing Israel-Palestine?

In his defense of settler colonial studies against criticisms that it is unable to account for political action, Veracini (2014: 312) has maintained that settler colonialism is an interpretive paradigm, not a transformative one: ‘settler colonial studies’, he writes, ‘is only ultimately accountable for the way it is effective in explaining things’. Yet, as I have already noted, this is not precisely the case in the context of Israel-Palestine. Not only is the settler colonial paradigm increasingly associated with particular normative projects, namely a critique of the two-state solution and advocacy for a single democratic state (e.g. Collins, 2011), but both Veracini and Wolfe have ventured into the question of ‘solutions’ in their respective accounts of the dynamics of Zionist settler colonialism. While they are quite divergent in their readings of what it would mean to decolonize Israel-Palestine, I suggest that they are nevertheless indicative of the limitations of the settler colonial paradigm’s structural perspective, which flattens manifestations of settler colonialism and lends itself to certain parameters. These parameters neglect important differences between Israel-Palestine and its typical sites of comparison – not least of which is the relative ‘completeness’ of settler ethnic cleansing efforts and the political geographies and modes of legal governance they produce (Gordon and Ram, 2016) – which have important implications for any project of decolonization. After all, if there is there is no onesize-fits-all model of colonialism, there is no route to decolonization appropriate to all contexts (see Kohn and McBride, 2011). In this last section, I want to engage Veracini’s and Wolfe’s accounts as a means to trace some of these areas of neglect, and, in so doing, gesture towards issues in need of serious reckoning in the settler-colonial paradigm’s prescription for decolonization. For Veracini (2013: 26), the conflict is best understood in terms of how the Zionist settler colonial project to establish a Jewish-majority state in historic Palestine is complicated and compromised by the ongoing occupation. If success is a matter of perceived legitimacy, Veracini takes 1967 as marking a decline in the success of Israeli settler colonial practice and suggests that the occupation itself is an instance of failed settler colonialism, insofar as Israel has largely failed in having its West Bank settlements recognized as part of the settler colonial state (p. 30). When settler colonialism fails in its attempt to extinguish the colonial relation, he asserts, it reverts to colonialism where the colonial relation is underscored. This explains both the permanency of the occupation – if ‘the Occupation was established as a means to enable permanent settlements, now it is the settlements that perpetuate the need for permanent occupation’ – and the radical turn to the Right inside Israel, which has seen ‘the integration of Israeli Arabs... progressively reversed’ and the ‘autonomy of the settler colonial project eroded’ by an increasing reliance on external support from international allies and the Jewish diaspora (pp. 32–3). This ‘simultaneous coexistence of successful and failed settler colonialisms’ (p. 39) means that ‘approaching the conflict would probably require a suite of solutions’ (p. 27). Nevertheless, Veracini is rather coy about what these may be. On the one hand, he emphasizes that the ‘decolonization paradigm’ is only really available to the West Bank and Gaza Strip, and that other frameworks must be made available to Palestinians inside Israel and those in the diaspora who, by virtue of the success of the Israeli settler project inside Israel, have effectively had decolonization taken off the table (p. 40). On the other hand, he seems to suggest that any solution will nonetheless be unable to escape the colonial conditions that have shaped it. If two-states is a ‘colonial solution’, because ‘internationally sanctioned Palestinian independence (and associated forms of neo-colonial dependency) ...should be seen as the colonial occupation’s logical outcome, not its demise’, one-state ‘turns out to be the settler colonial solution’ because it signals the permanency of the settler polity (pp. 33, 39). Wolfe (2012), in contrast, is far more direct about his preference for a single democratic and secular state in Israel-Palestine. The two-state solution, he suggests, is not only ‘liberal subterfuge’, but an oxymoron, because of its inability to reckon with the ways in which the ‘New Jew’ Zionism has sought to construct needs the contrapuntal presence of the Palestinians to come into being – without the Palestinians, Israel would fracture under the weight of its own internal diversity (pp. 319–20). Wolfe is especially troubled by the religious/secular division that plagues Zionism as an ostensibly secular national movement framed around the notion of Jewish return, and which has become more politically salient with the religious-national settlement movement that has taken hold in Israeli politics since the late 1970s. The ‘ascendancy of [this] religious element’ is of particular concern, loading the settler will to eliminate the native with an additional theological dimension; should Israel ‘be finally cleansed of its Natives’, he warns, it would only be ‘left with a choice between theocracy and implosion’ (p. 318). Thus the appeal of a single state solution: not only does it deal with the tricky questions of territory and sovereignty in one fell swoop, but it also does away with this risk of theocracy. Additionally, it dissolves the ‘irreducible contradictions between Zionism’s twin goals of territorial expansion and ethno-racial exclusiveness’: ‘in a secular state ... that exists for its citizens rather than co-religionists this intractable problem disappears’ (p. 321). The desire for ethnic purity that has characterized Zionism to date becomes its greatest asset in this regard, namely because it does not allow for the assimilation of Palestinians. Thus, for Wolfe, [r]ather than absorbing the colonised population into the ranks of the colonisers, and thereby eliminating that population, a secular democracy does not require the elimination of either – or, better, any – of its constituent ethnicities. That is the whole point. (p. 321) In this sense, ‘a unified state not only dismantles Zionism. In the process, it dismantles settler colonialism’ (p. 321). If Veracini offers a seemingly impossible vision of decolonization in Israel-Palestine, where any solution would be compromised by the colonial conditions preceding it, Wolfe’s vision seems in comparison impossibly easy: not only can Zionism be dismantled, but so too can settler colonialism. This is in stark (and surprising) contrast to his generally fatalistic take on structural transformation in settler colonial societies. It is, however, particularly revealing of the tendency in settler colonial scholarship to regard Zionism as purely settler colonial and the conflict akin to any other settler colonial context (e.g. Collins, 2011). Both Veracini and Wolfe are guilty of this, even as they are otherwise attentive to many of the particularities of the conflict. Wolfe (2013b: 9), for instance, identifies ‘Zionism as settler colonialism pure and simple’, if not a particularly voracious form stuck at the frontier stage. Likewise, Veracini (2015: 1–2) suggests that the ‘settlement, nothing else, [is] the absolute core of Zionist practice’, going so far as to claim that ‘what is in front of us is not a conflict situation, it is actually a postconflict’ (‘postconflicts’, he notes, ‘are rarely peaceful’). Tim Rowse (2014) has argued the tendency towards ahistorical and decontextualized analysis in settler colonial studies means that it misses much about the variety of geographical and regional forms settler colonialism takes. It is equally important, however, to recognize that the settler colonial frame itself is by no means ahistorical or decontextualized. To the contrary, settler colonial studies is very much an Antipodean perspective, having emerged primarily within an Australian context, and it is fair to say that this is evidenced in its main preoccupation with white settler societies. While all transnational frames have to be developed somewhere, the structural emphasis of the settler colonial paradigm not only obfuscates this local heritage but means that its vernacularization is often replication, which is where the ‘imported institution remains largely unchanged from its transnational prototype [and] the adaptation is superficial and primarily decorative’ (Merry, 2006: 44). This can be evidenced in Wolfe and Veracini’s respective accounts of decolonizing Israel-Palestine, which leave the national dimensions of the conflict under-examined and fail to address the unique affective and socio-political resonances of the native/settler distinction in the Israeli-Palestinian context. As Wolfe (2012: 287) points out, the circumstances and intentions of settler colonizers is inconsequential from a native point of view, and both he and Veracini perhaps quite rightly prioritize the historical outcomes of Zionism (namely, the displacement of the Palestinians) over all other meanings attached to it. Nevertheless, it is important to recognize that there is a strong nationalist aspect to Zionism, which is after all a national movement geared towards Jewish self-determination. This marks it as a particularly unique – although not singular – form of settler colonialism. In contrast to settler colonies like Australia where the drive for a settler identity separate from the metropole only emerged much later, the impetus towards an exclusive form of settler self-determination has shaped almost all aspects of the conflict in Israel-Palestine since at least the second aliyah that reached Palestine between 1904 and 1914 (see Shafir, 1989). Of course, Zionism is not the only colonialist project to be carried out in the name of ostensibly nationalist ideals – the French colonization of Algeria is widely cited as a case in point (Pappe, 2008: 612–13). Yet, it does mean that understanding Zionism’s nationalist impulse is crucial to understandings its political strengths and continued affective resonance; ‘a simple dismissal of Zionism’, Jacqueline Rose (2005: 13) appeals, ‘fatally undermines the case it is intended to promote’. Moreover, as Pappe (2008: 613) stresses, ‘labelling Zionism as nationalist or national [by no means] absolve[s] it from the accusations of dispossession and occupation’ (my emphasis). Nor does it lessen its crimes against the Palestinian people. While the Palestinian anti-colonialism has historically been entangled with a broader pan-Arabism, it is similarly impossible to understand it outside of a nationalist vocabulary and the struggle for national self-determination (Said, 1979). Given that the settler paradigm is nominally able to incorporate the Palestinian struggle for national self-determination under the rubric of decolonization, it is striking that neither Wolfe nor Veracini reckon in any rigorous way with implications of Palestinian nationalism in their respective accounts.4 Wolfe’s (2012: 231) one-state, for instance, ‘does not require the elimination of its constituent ethnicities’, neglecting not only that the affirmation of those ethnicities is also a powerful political driver in the ongoing conflict, but that the affirmation of identity for colonized peoples has been a defining feature of decolonizing projects in general (Fanon, 1967). Veracini’s (2013) efforts at disentangling the colonial from the settler colonial would similarly seem to reinforce the Green Line’s fragmentation of the Palestinian polity into those in the ‘territories’ and those inside ‘Israel proper’, thus undermining the paradigm’s potential to aid Palestinian nation-building efforts. The lack of attention paid to the Jewish drive for ethno-national selfdetermination, however, is not surprising. From the perspective of settler colonial studies, the question of settler self-determination is an especially fraught one: not only is it seen as a particular historical relic (loosening ties to the ‘motherland’), but settler colonial scholarship has concerned itself precisely with critiquing how the notion of settler selfdetermination legitimizes continued dominance over indigenous peoples. Additionally, in the context of contemporary white settler societies like Australia, Canada and the United States, the claim for ethno-national self-determination simply does not make sense (save for a few at the very periphery of politics) given that the shape of the polity is more civic than ethnic. Indeed, it is the settler colonial polity’s ability to subsume indigenous alterity that is regarded as most troubling in the settler colonial paradigm; assimilation is, after all, the final stage in the logic of elimination (Wolfe, 1994). It is from this perspective that we can make sense of Veracini’s insistence that the one-state is the settler colonial solution. Yet, as Wolfe makes clear, Zionism has little capacity to assimilate Palestinians: the lines of identity, driven as they are by a dichotomy of Jew/non-Jew determined by a tribal notion of maternal blood-lineage, are simply too firm for serious parallels to be made between Israel and the white settler societies with which it is typically compared. While Wolfe’s (2012: 320) account is more sensitive to these dynamics, his vision of a secular, civic, inclusive and plural united state (which he interestingly addresses to European Ashkenazi Jews) would nevertheless seem to leave aside the ways in which such plurality is fiercely charged in the Israeli-Palestinian context – and is, most certainly, also characterized by a religious dimension for Israelis and Palestinians alike. In this regard, Wolfe replicates much debate on the one-state solution, which presumes that Jews would be incorporated into a single state as a neutral and repentant collectivity (Farsakh, 2011: 70 ). If even a one-state solution would have to reckon with the reality that the very presence of Israeli Jews as a settler collective is grounded on a history of dispossession and occupation, then surely dismantling Zionism – as per Wolfe’s wish – is not enough to dismantle settler colonialism. Perhaps the question is less one of dismantling Zionism than it is of decolonizing Jewish Israeli identity and its settler colonial privileges which, as Theodora Todorova (2015) argues, are most powerfully connected to the Jewish right to return – a right in turn denied to the Palestinians. This is something missed by Veracini, who takes the intimate connections between Israel and the Jewish diaspora as a sign of weakness in the settler colonial project, when this complicated entanglement with diaspora is in fact constitutive of Zionist settler colonialism. If Wolfe and Veracini fail to fully engage the conflict’s nationalist dimensions, they are also strangely silent on the resonances and implications of the settler/native distinction in the Israeli-Palestinian context. Indeed, one of the weaknesses of the settler colonial paradigm as a whole is its inability to fully reckon with indigenous and settler identities as interactive, mutable and contingent processes of social signification. For Wolfe, the native/settler distinction is only socially constructed insofar as it is forged at the moment the settler decides she wants to stay; yet, as Francesca Merlan (2009) has argued, ‘indigeneity’ as a transnational category cannot be understood outside of the historical processes which brought it into being, nor can it be considered inherently oppositional. Counter to most white settler nations where the settler/native distinction has been largely normalized into politics and culture (the settler may seek to ‘indigenize’, but they are under no illusions that they are ‘indigenous’ per se), it is important to recognize that the identities of settler and indigene are not only constructed but also vehemently contested in Israel-Palestine. Rightfully or not, the notion of Jewish return inherent to Zionism means that Israel could be nothing if not ‘native’, to paraphrase Edward Said (1979: 88). As much as the state is consciously engaged in an active process of indigenizing its Jewish population through forging an imagined geography of exclusive Jewish ownership (Abu El-Haj, 2003), this could not have claimed so much success without the pervasiveness of the narrative that ‘we were here first’. The identity of settler is equally loaded in the Israeli context. This means that it has quite different connotations than in white settler societies, where it is more an affective category connected to feelings of historical guilt or nation-building processes that reckon with past injustice – which are often about seeking retroactive legitimacy for the settler state, and thus require a relatively established and secure polity. While there is no doubt that the settler identity resonates with the ‘dormant codes of the immigrant settler political culture’ that characterized Zionism pre-1948 (Kimmerling, 2005: 232), the meanings attached to ‘settler’ are nevertheless complicated by the active settlement project in the territories. This is something of which the ultranationalist settler constituency has sought to take advantage, pointing to the inconsistencies in the liberal Zionist insistence on seeing West Bank settlement as illegitimate while glossing over the settlement history of Tel Aviv, for instance (Lustick, 2015). Certainly, the long-held existential fear of being ‘driven into the sea’ explains the aversion of many Israelis to the implications of illegitimacy contained within the ‘settler’ category; perhaps more sinisterly, the observation that settler states require relatively complete ethnic cleansing in order to normalize (Gordon and Ram, 2016) may only serve to push the Israeli public further to the right. Most significant, however, is the lack of attention Wolfe and Veracini pay to how the status of the Palestinians as an indigenous people might legitimately frame their struggle. Certainly, for a paradigm that purports to prioritize native experience, settler colonial studies in general tends towards an affective focus on the settler which pushes actual indigenous struggles to the side (Snelgrove et al., 2014: 10). On the one hand, Wolfe’s (2012) unified state dissolves the settler/native distinction along with settler colonialism, leaving aside the question whether such a flattened inclusivity is necessarily just considering the kind of historical injustice the Palestinians have experienced. Veracini (2013), on the other hand, leaves his main discussion of indigeneity to the failure of Israelis to indigenize, employing indigenous as a mere descriptive category in the context of the Palestinians. The indigeneity framework, to quote Amal Jamal (2011: 5), is ‘particularly pertinent for Palestinian citizens of Israel because it provides a vocabulary beyond conventional liberal citizenship rights with which they can articulate their demands’. These political resonances credibly explain the ease with which Palestinians inside Israel have taken up the settler colonial frame. What, however, may the settler colonial paradigm and an indigenous rights platform offer in the context of ongoing colonial occupation in the West Bank, and in the context of constant siege in the Gaza Strip? These are, of course, questions yet to be answered, and better answered by Palestinians themselves. Nevertheless, without serious engagement with such questions, the settler colonial paradigm not only risks turning ‘native’ into an affective category emptied of wider political content, but once again redrawing the Green Line between Palestinian citizens of Israel and those in the territories.

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#### Police shut down alternatives

Rosenthal 12, Nicholas G. Rosenthal, “Reimagining Indian Country: Native American Migration & Identity in Twentieth-Century Los Angeles”, book “chapter 4: Postindustrial Urban Indians. Life and Work in the Postwar City” Pg. 85-86, <https://www.jstor.org/stable/10.5149/9780807869994_rosenthal> /EH

Racial discrimination, however, was clearly a factor in the industrial workplace. For other Indians racism was in fact a daily reality of postwar urban life. Indians who frequented skid-row areas often found themselves targeted by city police departments that harbored stereotypes about Indians and drunkenness. Fred Gabourie, a Seneca Indian and a defense attorney in Los Angeles, testified to the NCIO in 1969 that “police officers, if they see an Indian [downtown] they might figure he is drunk and just haul him in.”32 Edward Olivas, a Chumash Indian living in Los Angeles, elaborated in an interview conducted in 1972: “Well, I’ve had these experiences with policemen. They’ll kick you in the ass when you’re down in the gutter, pick you up to take you to jail, and if you utter the least resistance, they’ll beat you up.”33 H. Brown, a Winnebago Indian, remembered being arrested repeatedly in the 1950s and 1960s around downtown Los Angeles and charged with being drunk: “I’d be walking down the street, here come detectives. ‘Come on. You know, you didn’t do nothing, but we got to take you with us, I got to fill my quota. We got to make so many arrests this week.’ And they would take me to jail. And it used to be like that downtown. They had to have so many arrests . . . it didn’t matter if you were sober or not.” Brown also recalled that these arrests often led to jail time: “The most you would get was 90 days. They would give you 10, 15, 20 [days]. But if the [ judge] seen you twice, in a couple of months, he’d give you 90 days or 60 days. They’d send you out to [a county work farm to serve your sentence].”34 The rise of the Red Power movement in the early 1970s and highprofile events such as the occupation of Wounded Knee also had a backlash for Indian residents in their dealing with police. The Los Angeles Indian Center listed dozens of complaints of police harassment in 1973. One individual reported that he was stopped by police officers and searched after he had witnessed a fight. The officers found an American Indian Movement membership card in his pocket and responded, “Oh, you’re one of the bad guys,” then beat him up, threw him in the police car, and charged him with being drunk.35 These kinds of police and Indian interactions continued, but some efforts to address them began. In 1975 police officers arrested several Indians who were sitting on couches in front of a house run by a Los Angeles alcohol treatment center after supposedly identifying them as suspects in a robbery. Officers also “unduly harassed and threatened” the center’s staff. A complaint based on the incident was sent to the mayor’s Los Angeles Human Relations Commission and led Mayor Tom Bradley to request an investigation by the police commission.36