# 1AC

### 1AC---Cybersecurity

#### The Advantage is Cybersecurity:

#### Standards-Setting Organizations (SSO’s) are industry members who jointly establish standards for information tech defined by the adoption of standard-essential patents (SEP’s), which are licensed to companies who wish to implement the tech in their product, called implementers, on Fair, Reasonable, and Non-Discriminatory (FRAND) terms. Current standards promote price gouging, FRAND enforcement is critical.

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I. Standard Setting and the Competitive Process The fundamental economics in the information technology sector, driven by network effects, implies that there is enormous value associated with establishing compatibility standards. Popular standards include the mobile broadband standards used in cell phones, which are established by the 3rd Generation Partnership Project (3GPP), and the Wi-Fi technology for wireless local area networks, which is enabled by the 802.11 standard established by the Institute of Electrical and Electronics Engineers (IEEE).4 There are many SSOs, and their rules and procedures differ considerably. In addition to IEEE, leading SSOs include the International Organization for Standardization (ISO), the International Telecommunication Union (ITU), the European Telecommunications Standards Institute (ETSI), the Internet Engineering Task Force (IETF), and the World Wide Web Consortium (W3C).5 SSOs generally establish standards by holding a series of committee meetings among industry participants. These meetings culminate in a vote on a technical specification that describes what features or attributes a product must have in order to comply with the standard. Most SSOs are open to all industry participants and seek to operate on a consensus basis, applying certain voting rules. SSOs do not normally engage in patent licensing, nor do they specify how patent royalties will be divided up among patent holders. They leave that to their members, which in some cases form patent pools to address these issues.6 SSOs adopt specific policies relating to intellectual property rights (IPRs).7 These IPR policies are generally intended to enable the SEP holders to obtain reasonable royalties for licensing their patents, while prohibiting them from charging excessive royalties after other industry participants have committed to the standard. At that point, firms committed to implementing the standard— which we call “implementers”—would find it very costly to avoid using the patented technology. For this purpose, most SSOs require SEP owners to license their SEPs on FRAND terms.8 FRAND policies are especially necessary because negotiations between SEP holders and implementers generally take place only after the implementers have used and infringed the technologies claimed by the SEPs. Standards involving information and communications technology can involve hundreds or even thousands of SEPs, many with uncertain boundaries for infringement. In addition, a time lag exists between patent application and patent issuance. For these and other reasons, it is impractical for implementers to enter into negotiations for patent licenses with all SEP owners prior to the establishment of a standard and to their implementation of it.9 The fact that patent negotiations generally do not take place until after implementers have used and infringed the technologies has several critical implications. First, at the time of negotiation, implementers are locked into the standard and the technologies claimed by the SEPs—that is, the cost to switch to an alternative technology or standard at that point—ex post—is much greater than it was ex ante, before the patented technology was first included in the standard. Ex post, the patent holder is no longer competing to have its technology included in the standard, nor is it competing to have implementers of the standard use its technology. Instead, because the patent holder owns an asset that is essential to the standard, implementers have no choice but to use the patented technology. If the standard is commercially successful, implementers are willing to pay a much larger royalty for use of the patented technology than they would have paid ex ante, when the SEP holder faced competition from other technologies. In these circumstances, the SEP holder can be said to have obtained monopoly power in the market in which the patented technology is licensed for use in implementing the standard.10 Second, because of lock-in and the implementer’s ongoing infringement, the potential for litigation looms large in licensing negotiations. In effect, the parties are negotiating about how to settle an infringement suit, and that negotiation is heavily influenced by their predictions as to what the court will do if they cannot agree. This situation is not unique to SEPs; it arises frequently when firms are faced with patent infringement claims for products they have independently developed or technologies they have inadvertently infringed. Patent law addresses such instances by specifying that patent holders are entitled to “reasonable royalties,” defined as the royalties that the parties would have negotiated prior to the infringement and thus prior to lock-in.11 Those hypothetical ex ante royalties reflect the market value of the patent license. Notwithstanding the law’s embrace of this principle, however, as a practical matter, patent holders are generally able to recover more than the ex ante value of the patent when litigation occurs after the implementers are locked in. Further, negotiations in the shadow of litigation after lock-in tend to result in royalties in excess of the ex ante or market value of the patented technology.12 Third, the shadow of litigation is particularly problematic in the communications and technology sector, in which products typically include hundreds or thousands of patented technologies. A court-ordered injunction involving such products would deprive the implementer of not only the value of the technology covered by the patent-in-suit, but also the value of the entire product.13 Implementers that are forced to bear the risk of an injunction are thus induced to agree to royalties greater than those that would be appropriate if only the value of the patented technology were at stake. Those royalties systematically provide SEP holders with excessive compensation in comparison with the benchmark of ex ante royalties. These implications of lock-in and ex post dealings are well-understood: they represent an example of the general concept of lock-in and opportunism developed by Oliver Williamson.14 The Federal Circuit has also recognized the market distortions caused by the inclusion of patented technologies in public standards and the resulting danger of patent holdup involving SEPs.15 For these and other reasons, the SEP holder has ex post monopoly power that, if left unchecked, would enable it to obtain royalties far in excess of the royalties that it could earn in a competitive market.16 To address this common problem and limit ex post opportunism by SEP holders, SSOs typically require participants that own SEPs to make certain FRAND commitments. In particular, by requiring a commitment to license on “fair and reasonable” terms, the FRAND requirement aims to prevent, or at least reduce, the extent of monopoly pricing by SEP holders. And by requiring a commitment to license on “nondiscriminatory” terms, the FRAND requirement can prevent SEP holders from extracting monopoly premiums by selective licensing or, more important, migrating their monopoly power from the FRAND-regulated market to unregulated standard-implementing product markets by licensing to only one or a few implementers or licensing to selected implementers on discriminatorily favorable terms.

#### Aggressive patent strategies create structural flaws in 5G standardization that imperils domestic cybersecurity---market competition reduces the incidence of vulnerability and severity of attacks.

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III. COMPETITION AND CYBERSECURITY In addition to the historical review done so far, another approach to understanding the relationship among patents, competition, and national security is to consider the role of cybersecurity. There is little doubt that computer system vulnerabilities that enable hacking and spread of computer exploits are a threat to the nation’s defenses, so better cybersecurity is a key part of national security strategy.155 Strong competition can thus complement national security by enhancing domestic cybersecurity, and patent assertion that unduly weakens competition detracts from cybersecurity.156 Competition promotes better cybersecurity in at least two ways. First, multiple studies show that competition encourages firms to improve their products on multiple vectors including cybersecurity. Second, competition avoids a situation that security experts call a “monoculture,” which increases vulnerability to severe cyberattacks. As former Secretary of Homeland Security Michael Chertoff wrote recently, “We need competition and multiple providers, not a potentially vulnerable technological monoculture,” to guarantee national security.157 Thus, cybersecurity provides a useful lens for understanding how unfettered patent assertion and licensing can detract from national security. A. Cybersecurity as Competitive Value-Add Competition enhances national security by reducing the incidence of technical vulnerabilities. That effect is especially important for security sensitive systems such as mobile telecommunications. Intuitively, a causal chain from competition to cybersecurity makes logical sense. Computer security is a value-added benefit to consumers, so firms in competitive markets are likely to use security to gain an edge over their competitors.158 In monopolized markets, though, there may be less external impetus to test products for flaws, and the monopolist may choose to focus less on security and more on new product features or increased product quality. Economic research confirms these hypotheses about competition leading to better cybersecurity. A 2009 empirical study of web browsers considered the impact of market concentration on the amount of time that vendors took to fix security vulnerabilities as they were discovered.159 The study found that the presence of more competitors correlated with faster cybersecurity response—a reduction of 8–10 days in response time per additional market rival.160 Similarly, business researchers in 2005 modeled incentives for firms to engage in sharing of cybersecurity information, and concluded that the “inclination to share information and invest in security technologies increases as the degree of competitiveness in an industry increases.”161 Another study found that, where two software firms are in competition, at least one will be willing to take on some degree of risk and responsibility for cybersecurity, whereas a monopoly software firm will consistently fail to accept such responsibility.162 To be sure, an unpublished study from 2017 found that some market concentration can make firms more responsive to cybersecurity issues, but only to a point: “being in a dominant position reduces the positive effect of having less competitors on the responsiveness of the vendor,” and indeed the “more dominant the firm is, the less rapid it is in releasing security patches.”163 This research confirms that competition is more conducive to cybersecurity. It is not hard to see how this applies to emerging communication technologies markets. In the absence of competition, the above research suggests that device manufacturers, chip makers, and software developers will lack incentives to respond to vulnerabilities, to share information about cybersecurity practices and issues, and to take responsibility for security matters. Mobile phone chips have had their share of cybersecurity failures already.164 The best way to flush out ongoing and future cybersecurity issues is to maintain competitive pressure at all levels of the supply chain. B. Vulnerabilities of “Monocultures” A second reason why monopoly undermines cybersecurity is that monopoly leads to a “monoculture” of single-vendor products, opening the door to massive systemic failure in the case of a cyberattack. Computer researchers developed the theory of software monocultures in the early 2000s, in response to the regular phenomenon of computer viruses and other attacks spreading rapidly by exploiting flaws in the dominant operating system at the time, Microsoft Windows.165 Where a computer system such as Windows has a commanding share of users, a virus that exploits a flaw in that system can quickly spread to infect a whole interconnected ecosystem. An operating system monopoly thus enables fast and easy spread of cyberattacks, and better cybersecurity would be achieved through greater diversity in online systems.166 As one research group posited, “a network architecture that supports a collection of heterogeneous network elements for the same functional capability offers a greater possibility of surviving security attacks as compared to homogeneous networks.”167 There has been considerable study of the theory that computer monocultures are naturally more vulnerable to attacks.168 In one study, computer science researchers reviewed a catalog of 6,340 software vulnerabilities recorded in 2007, to compare whether comparable software would share the same flaws.169 Of the 2,627 vulnerabilities applicable to application software (as opposed to operating systems, web scripts, and other software components), only 29 (1.1%) applied to substitute products from different vendors but providing the same functionality.170 By contrast, different versions of a single software product were found to share vulnerabilities 84.7% of the time.171 Thus, software monocultures share exploitable flaws even when there is some variation in versions across the monoculture; by contrast, diversity in software is almost guaranteed to prevent a single flaw from affecting all users. In the case of 5G and wireless mobile communications, a monoculture is an especially concerning possibility. To the extent that systems such as smart city sensors or communication networks are widely deployed in a monoculture fashion, a widespread attack could have devastating consequences, potentially blacking out a region and affecting essential services such as 911.172 A monoculture that is vulnerable to so-called “rootkits” or “backdoors”—maliciously installed software that enable bad actors to commandeer systems—could also enable mass surveillance or spying by private hackers or foreign governments.173 The presence of systems from multiple vendors would mitigate these possibilities. The monoculture theory is not without critics, but a review of those criticisms shows them to be inapplicable to contemporary communication technologies. Some critics suggest that software diversity imposes unwarranted costs on firms who must forego economies of scale and devise seemingly duplicative yet different setups of computer systems.174 But those concerns largely focus on the situation where a single firm produces and manages heterogeneous systems, concerns that are avoided where heterogeneity arises naturally through competition between two unrelated firms. Critics also argue that technological measures can create “artificial diversity” through automated randomization of software code, so software engineers can purportedly solve monoculture issues and device users need not worry about the issue.175 But even these critics acknowledge that artificial diversity techniques are often insufficient because they must make assumptions about what aspects of the technology are most vulnerable to attack, and they concede that artificial diversity cannot stop attacks involving operation of legitimate software functions in undesirable ways (sending spam emails or deleting document files, for example).176 It is widely recognized that a monoculture is unavoidable in at least one respect: Most connected devices will need to conform to technical standards.177 5G, for example, is a technical standard developed by a private industry consortium called 3GPP.178 A flaw in any such standard would render all mobile devices implementing the standard vulnerable to an identical attack.179 Avoiding these sorts of systemic flaws in standards requires rigorous development, analysis, and testing of the standard in the development process, which in turn requires ensuring that as many firms as possible, especially firms that share basic American values, are involved in the development of those standards.180 Thus, the necessary standardization of information and communication technologies is perhaps the most important reason why a competitive communication technology market is essential to cybersecurity and national security.

#### 5G rollout is inevitable and vastly broadens America’s cyber vulnerabilities.

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The continuing rollout of the fifth generation of mobile networks and technologies, known collectively as 5G, is set to radically transform the business world. Incredible new speeds, dramatically reduced latency and fresh swathes of bandwidth will allow real-time connectivity on a whole new scale. Smart cities, autonomous vehicles and augmented reality present amazing opportunities, so it’s no surprise that investment in 5G technologies from governments and businesses is enormous and growing. Amid the excitement of all this technological promise, significant new dangers are being overlooked. As digital connectivity soars to new heights and internet of things devices expand to rapidly become the internet of forgotten things, organizations will face a number of serious security challenges. As someone who specializes in cybersecurity and technology, I believe it’s crucial that organizations start to consider the threats posed by a vastly broadened attack surface, machine learning manipulation and parasitic malware. Securing The Infrastructure From my perspective, organizations, businesses and individuals will quickly become reliant on 5G networks for daily life. Inevitably, 5G technologies and infrastructure will be a prime target for foreign governments and cybercriminals. The line between protectionism and concern about espionage is blurry. Any uncertainty about the technology that forms critical infrastructure should be of major concern to business leaders. While the explosion of digital connectivity presents new opportunities, it also massively increases potential attack surfaces. Many more devices and sensors will be connected by millions of new 5G masts, and these new 5G networks have a heavier reliance on software. What this means is an explosion of new attack vectors, possible vulnerabilities and weaknesses that can be exploited by a range of bad actors. All the benefits that 5G promises in terms of greater speeds and lower latency will also benefit hacktivists, enabling them to carry out attacks more rapidly and at greater scale. Fresh Threat Landscape Spoofing and jamming of 5G networks could cause serious disruption for supply chains and dependent infrastructure. By targeting embedded IoT devices, determined attackers could put vital networks under threat. Greater speed, higher bandwidth and lower latency will enhance the potency of distributed denial of service attacks. Many traditional techniques will find fresh life in the 5G future, and the impact on business could be catastrophic. As more organizations come to rely on machine learning, I predict attackers will find new ways to exploit neural networks and subvert these systems for their own gain. Manipulated machine learning could enable attackers to enrich themselves, obfuscate and deceive, ultimately sowing confusion on a grand scale. What’s worrisome is the opportunity for parasitic malware to burrow into 5G networks and systems to steal processing power and degrade the performance or even shut down critical services like water and power. Any adoption of 5G must include a proper assessment of the risks involved and plans for protection, vigilance and remediation of security incidents.

#### Cyber escalation is more likely now than ever---empirics don’t assume intensified competition and acute geopolitical conditions.

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Situational Cyber Stability: When Cyber Capabilities Can Be Destabilizing To sum up: Cyber conflict has not escalated and there are strong, theory-backed reasons why it provides negative feedback, acting as a pressure release pushing back against geopolitical crises. We agree with these conclusions, which explain why cyber conflict has not yet escalated and may not in the future. However, we believe they hold only if the next few decades generally resemble the past few. This stability is situational and we see three major, interrelated mechanisms by which it may change. Cyber conflicts and competition are intensifying over increasing stakes and might inadvertently or intentionally spark a larger conflict; there is a higher likelihood of acute crises, far worse than the relatively bland geopolitical conditions of the past decades; and in times of acute crisis, the dynamics go through an inversion, encouraging rather than suppressing escalation. Spark: Cyber Conflict Can Cause Acute Geopolitical Crises As cyberspace becomes increasingly existential for economies and societies, states compete more aggressively over the same cyber terrain and treasure. In such circumstances, cyber capabilities add positive feedback, intensifying conflict within cyberspace. Ben Buchanan has featured some of these dynamics in his book, The Cybersecurity Dilemma. If a “potential adversary bolsters its own security by increasing its methods of secrecy and ratcheting up intrusive collection of its own — or by shooting back at the collectors — the first state will often feel a need to respond” with “still more intrusive collection.”[34](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn34) This situation is one which can easily notch upward but only with great difficulty be reversed. This section will summarize the relevant dynamics of cyber conflict, establish that conflict is escalating in cyberspace, and discuss how this dangerous mix of factors can spark war. Escalation in Cyberspace Cyber conflict and competition are intensifying. A cyber incident might cross the threshold into armed conflict either through a sense of impunity or through miscalculation or mistake. Alternatively, the cyber attack might be brazen or reckless enough to demand a muscular response from the target state. Libicki’s framework of cyber escalation requires three elements: an increase in intensity, the crossing of significant thresholds, and causal links between cyber incidents (i.e., “one attack is in response to another”).[35](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn35) A cyber incident might cross the threshold into armed conflict either through a sense of impunity or through miscalculation or mistake. We believe the first two elements are important and it is not necessary to balance each incident with its tit-for-tat response. Cyber conflict can be escalatory even if there is not a direct retaliation (“you did A, so we will do X”) but rather a trend over time (“we caught you doing A and B, and suspect you of C … so we’ll do X and Y and for good measure see no reason to further hold off on Z”). It is through this larger picture, the series of campaigns and capabilities, that the escalatory mechanics become obvious. Despite no provable chain of causation from A to Z, the series can show evidence of intensification and ignored thresholds, if the direction and magnitude of the vector are consistent over a long period of time. A full analysis of escalation requires its own paper, but as an initial analysis we have selected four points each separated by a decade over forty years in order to illustrate this trend: In 1988, nations did not have major cyber organizations. Within the U.S. Department of Defense, there were small groups planning and conducting offensive operations, but there was no dedicated civilian defensive team in the United States until the creation of the Computer Emergency Response Team, funded by the Defense Department, in November 1988. There were significant incidents — such as the Morris Worm of 1988 and a case known as the Cuckoo’s Egg of 1986 which involved German hackers who searched for information on U.S. ballistic missile defense technologies and then passed their findings along to the Soviet KGB. However shocking at the time, those incidents still had quite modest scope, duration, and intensity.[36](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn36) Ten years later in 1998, the world’s first combat cyber unit — established in the U.S. Air Force — had already been in existence for three years, with 93 officers and enlisted.[37](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn37) The first major cyber bank heist was in 1995 against Citibank, while the U.S. military created the first cyber command in 1998 in response to the internal Eligible Receiver exercise and Solar Sunrise incident.[38](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn38) This command was staffed by about two dozen defenders (including one of the authors) and worked with the larger Computer Emergency Response Team and similar teams in the military services to defend against and trace the major Moonlight Maze espionage case to Russia.[39](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn39) Within two years, the command expanded and took on responsibilities to coordinate offensive operations, growing to 122 personnel with a $26 million budget.[40](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn40) Only 10 years after that, in 2008, Estonia suffered a debilitating cyber attack from Russia. Espionage against the United States from Russia became increasingly worrisome, including a case known as Buckshot Yankee, where Russian spies breached classified networks. Chinese theft of intellectual property would be known as the “greatest transfer of wealth in history” by 2012.[41](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn41) In direct response to these incidents, the Department of Defense combined their dedicated offensive and defensive task forces into a single U.S. Cyber Command in 2010.[42](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn42) What had been a defensive-only command with 25 people in 1998 grew to cover both offense and defense with a staff of over 900 by 2011.[43](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn43) In the decade leading up to 2018, the United States launched a sophisticated cyber assault on Iranian uranium enrichment facilities; Iran conducted sustained denial of service attacks on the U.S. financial system; North Korea attacked Sony; and Russia disrupted the Ukrainian power grid in winter (twice) and the opening ceremony of the Olympics.[44](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn44) U.S. Cyber Command grew to 6,200 personnel just in the operational element.[45](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn45) Iran and China created their own cyber commands as did the Netherlands,[46](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn46) the United Kingdom,[47](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn47) France,[48](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn48) Singapore,[49](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn49) Vietnam,[50](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn50) Germany,[51](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn51) and others. If intensification is measured as worsening levels of violence, then cyber conflict has intensified across all periods. By 2018, the problems faced in 2008 seemed minor and the organizations small and limited, while the cyber incidents from 1998 and 1988 appeared positively trivial. Operations that had appeared risky 20 years beforehand were now routine. The intensification trend is also clear according to the measurement of Libicki’s “number of troops committed to the fight.” The Defense Department expanded the central cyber warfighting force from zero troops in 1988 to 25 in 1998, 900 in 2011, and at least 6,200 in 2018. The first commander of the U.S. Cyber Command noted in 2011 that its creation “garnered a great deal of attention from other militaries,” which he hoped was not a sign of militarization but rather “a reflection of concern.”[52](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn52) Nations must indeed be concerned, as there are now dozens of copycats. Jensen, Valeriano, and Maness, using more quantified methods, have similar findings to this qualitative assessment, tracking a strong growth of latent cyber power by Russia and China from 2001 through 2014.[53](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn53) There is no obvious evidence pointing to a decrease or even a plateau in the intensity of cyber conflict, or that fewer thresholds are being passed now than 10, 20, or 30 years ago. The direction and magnitude of the change over four decades has marched in only one direction: a relentless increase as nations build their organizations and employ them in more frequent and more dangerous incidents.

#### Insecure technical standards cause inevitable systemic grid collapse---extinction.

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The infrastructure was essential, ubiquitous and providing basic functionality for everything in daily life from water to heat and transportation. And in an instant it was gone, plunging tens of thousands of residents into a life-threatening crisis. This is, of course, the narrative of the recent debacle in Texas, where a winter storm overwhelmed the state’s electrical grid and brought the state to a near-total blackout. But it should also be interpreted as a preemptive warning of what Americans will face from the next generation of the internet and the new realm of cybersecurity risk it will dramatically amplify. Both forms of infrastructure—a state-run electrical grid and the 5G and “internet of things” future to which we are rapidly hurtling—share three attributes. First, their construction reflects a lack of imagination about the danger that can quickly coalesce when seemingly remote threat scenarios become real. Second, compounding a lack of analytic imagination is an absence of preparedness. Third, for both the Texas electrical grid and the emerging internet, public policy protections are either meager or completely absent. In planning for the resilience of its electrical grid, public officials in Texas discounted the potentially devastating disruption that could occur from unpredictable events—whether related to climate change or just a once-a-century anomaly. They also eschewed precautions other states take seriously by allowing for the interconnection of electrical grid supply chains across their borders, ostensibly because of their ideological rejection of federal regulatory oversight governing such arrangements. As the United States builds out a new national 5G cyber-physical communications network through private service providers, Americans similarly discount the risks—myriad in their diversity and severity—that are orders of magnitude more significant than what Texas confronted recently. More physical things than people are already connected. The super empowered internet of tomorrow, known among some in the field as the “internet of everything,” will exceed by tens of billions of devices the number of connections between individuals simply communicating via social media or digital screens. This confronts policymakers with an imminent threat: A cyber outage is no longer about losing digital communications but about losing basic societal functioning and even human life. The failure of imagination is to think of the SolarWinds attack on U.S. federal agencies and tech companies as a worst-case scenario. The failure of imagination is to think of cybersecurity through a content-centric lens rather than as possible attacks on the material world. The emergence of internet-connected cardiac devices, digitally dependent cars, and internet-connected agriculture systems portend the stakes of a cyberattack to health care, economic and social functioning, and food security. The United States should be prepared for, and certainly not be caught by surprise by, such cyberattacks. Yet, the internet of everything is notoriously insecure. Internet-connected physical objects are not necessarily upgradeable. Nor do they come with adequate default security and encryption. The 5G infrastructure that helps connect digital objects has been at the center of debates over Chinese espionage. Industrial cyber-physical systems are based on technical standards that have not been collaboratively vetted for security and interoperability. One of the most infamous cyberattacks—the so-called Mirai botnet that took down major media sites and corporations—hijacked these insecure objects in homes to carry out the assault. The United States is not yet prepared. Finally, in the race to conceive and deploy effective public policy responses, the U.S. government as a whole is hardly more anticipatory or synthesized in its response to potential calamity than the state of Texas. The focus of U.S. cyber policy remains on information policy issues such as disinformation, manipulation and violent speech rather than securing the digital world that now powers our material day-to-day lives. The Biden administration confronts an enormous challenge in crafting a comprehensive strategy to the cybersecurity risks foreshadowed by the ruinous experience in Texas and its management of vital infrastructure. While the digital world has leapt from two-dimensional to three-dimensional space, cyber policy has not at all jumped from 2D to 3D. This failure of imagination, preparedness and policy protection must not be America’s cyber future; the stakes are far too high and the costs are far too great. The Texas disaster is a potent illustration of what has always been true: Our digital society and economy are extremely vulnerable and grow more porous and subject to penetration day by day. As digital sensors and cyber control systems become further embedded in physical infrastructure like energy systems, agriculture and transportation, there is no longer a separation between security of the “real” world and security of the online world. They are entangled and increasingly enmeshed—and policy has yet to catch up to either envisioning or mitigating the looming threats the U.S. confronts. If the energy grid cannot weather a winter storm, how can it be expected to withstand a major cyberattack? What other vital forms of national infrastructure—ranging from water, bridges, highways and roads, and ultimately our day-to-day financial system—are comparably at risk? As Texas dramatizes, it is neither hyperbolic nor exaggerated to assert that our survival could now depend on securing the inevitable cyber-physical future that is accelerating with stunning rapidity.

#### Actors have the means and motivations to strike critical infrastructure.

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Among critical infrastructure sectors in the U.S., energy is perhaps the most crucial of the 16 sectors defined by the Department of Homeland Security. This sector is so vital because it provides the energy necessary to run every other critical infrastructure sector. However, the U.S. power grid, the backbone of the energy sector, is built upon an aging skeleton that is becoming increasingly vulnerable every day. Whether from terrorists or nation-states like Russia and China, the power grid is susceptible to not just physical attacks, but also to cyber intrusion as well. However, much of this threat can be mitigated if the U.S. takes the appropriate steps to safeguard the power grid and avoid a potential catastrophe in the future. Since Sept. 11, 2001, terrorism on U.S. soil has been at the forefront of American consciousness. Critical infrastructure provides an appealing target because of the disproportionally large impact even a small attack can have on the sectors. In particular, the power grid represents a particularly lucrative target, both in terms of the ease of access and the large impact it can make. The National Research Council stated that the U.S. power grid is “vulnerable to intelligent multi-site attacks by knowledgeable attackers intent on causing maximum physical damage to key components on a wide geographical scale.”[[1]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn1) Additionally, the physical security of transmission and distribution systems is difficult due to the dispersed nature of these key components, which in turn is advantageous to attackers as it reduces the likelihood of their capture.[[2]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn2) From 2002-2012, approximately 2,500 physical attacks occurred against transmission lines and towers worldwide and approximately 500 attacks against transformer substations.[[3]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn3) Terrorists have the motivation to attack the U.S. power grid but the very nature of the grid makes it highly vulnerable. The power grid is not only at risk from physical attacks, but also nation-state cyberattacks. One nation that has shown both the capability and intent to use attacks against critical energy infrastructure is Russia, as demonstrated in their 2015 annexation of Crimea from Ukraine. A Russian cyber threat group known as Sandworm, which used its BlackEnergy malware, attacked Ukrainian computer systems that provide remote control of the Ukraine power grid.[[4]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn4) This attack, and another in 2016, each left the capital Kiev without power, prompting cyber experts to raise concern about the same malware already existing in NATO and the U.S. power grids.[[5]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn5) In any conflict between Russia and NATO, not only would similar cyberattacks pose a threat, but so would potential physical attacks severing fuel oil and natural gas lines to Western Europe. Russia has both the capability and intent to attack critical infrastructure, particularly power grids, during future conflicts in their “hybrid warfare” approach. Another nation that has the capability to attack critical energy infrastructure is China, representing a threat to not just the U.S. energy infrastructure but also that of our allies whose support would be vital in a major conflict. A recent NATO report highlighted this threat from China’s Belt and Road Initiative, stating that “[China’s] foreign direct investment in strategic sectors [such as energy generation and distribution] …raises questions about whether access and control over such infrastructure can be maintained, particularly in crisis when it would be required to support the military.”[[6]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn6) Like Russia, China has been active with cyber intrusions in U.S. energy infrastructure. The Mission Support Center at Idaho National Laboratory characterized these as attacks as “multiple intrusions into US ICS/SCADA [Industrial Control Systems/Supervisory Control and Data Acquisition] and smart grid tools [that] may be aimed more at intellectual property theft and gathering intelligence to bolster their own infrastructure, but it is likely that they are also using these intrusions to develop capabilities to attack the [bulk electric system], as well.”[[7]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn7) China, therefore, has both the capability and intent to conduct cyber intrusions and attacks for myriad reasons. Another arm of this threat is the reliance the U.S. energy industry has on imports from China, especially transformers. In early 2020, federal officials seized a transformer in the port of Houston that had been imported by the Jiangsu Huapeng Transformer Company before sending it to Sandia National Laboratory in Albuquerque. Sandia is contracted by the U.S. Department of Energy for mitigating national security threats.[[8]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn8) The Wall Street Journal reported that “Mike Howard, chief executive of the Electric Power Research Institute, a utility-funded technical organization, said that the diversion of a huge, expensive transformer is so unusual – in his experience, unprecedented – that it suggests officials had significant security concerns.”[[9]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn9) Previously destined for the Washington Area Power Administration’s Ault, Colo., substation, the transformer is believed to have been seized due to “backdoor” exploitable hardware emplaced by the Chinese prior to shipment.[[10]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/#_ftn10) Shortly after these events, President Trump issued Executive Order 13920, “[Securing the United States Bulk-Power System](https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-securing-united-states-bulk-power-system/),” essentially limiting the import of Chinese-built critical energy infrastructure components due to concerns about cybersecurity.[[11]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/#_ftn11) Interestingly, Jiangsu Huapeng “boasted that it supported 10 percent of New York City’s electricity load.”[[12]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/#_ftn12) Franklin Kramer, the former Assistant Secretary of Defense for International Security Affairs, testified before a U.S. House of Representatives Energy and Commerce subcommittee during an energy and power hearing in 2011 and said that a “highly-coordinated and structured cyber, physical, or blended attack on the bulk power system, however, could result in long-term (irreparable) damage to key system components in multiple simultaneous or near-simultaneous strikes.” He added that “an outage could result with the potential to affect a wide geographic area and cause large population centers to lose power for extended periods.”[[13]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/#_ftn13) Even the inclusion of features such as smart grids to the overall grid structure poses new vulnerabilities through their connectivity. Kramer stated that “such connectivity means that the distribution system could be a key vector for a national security attack on the grid.”[[14]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/#_ftn14)

#### Those attacks cause accidental nuclear escalation.

Klare 19, \*Michael T. Klare is a professor emeritus of peace and world security studies at Hampshire College and senior visiting fellow at the Arms Control Association; (November 19th, “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation”, https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation)

Yet another pathway to escalation could arise from a cascading series of cyberstrikes and counterstrikes against vital national infrastructure rather than on military targets. All major powers, along with Iran and North Korea, have developed and deployed cyberweapons designed to disrupt and destroy major elements of an adversary’s key economic systems, such as power grids, financial systems, and transportation networks. As noted, Russia has infiltrated the U.S. electrical grid, and it is widely believed that the United States has done the same in Russia.[12](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote12) The Pentagon has also devised a plan known as “Nitro Zeus,” intended to immobilize the entire Iranian economy and so force it to capitulate to U.S. demands or, if that approach failed, to pave the way for a crippling air and missile attack.[13](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote12) The danger here is that economic attacks of this sort, if undertaken during a period of tension and crisis, could lead to an escalating series of tit-for-tat attacks against ever more vital elements of an adversary’s critical infrastructure, producing widespread chaos and harm and eventually leading one side to initiate kinetic attacks on critical military targets, risking the slippery slope to nuclear conflict. For example, a Russian cyberattack on the U.S. power grid could trigger U.S. attacks on Russian energy and financial systems, causing widespread disorder in both countries and generating an impulse for even more devastating attacks. At some point, such attacks “could lead to major conflict and possibly nuclear war.”[14](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote14) These are by no means the only pathways to escalation resulting from the offensive use of cyberweapons. Others include efforts by third parties, such as proxy states or terrorist organizations, to provoke a global nuclear crisis by causing early-warning systems to generate false readings (“spoofing”) of missile launches. Yet, they do provide a clear indication of the severity of the threat. As states’ reliance on cyberspace grows and cyberweapons become more powerful, the dangers of unintended or accidental escalation can only grow more severe.

#### Cyber-compromised NC3 causes nuclear war.

Klare 19, \*Michael T. Klare is a professor emeritus of peace and world security studies at Hampshire College and senior visiting fellow at the Arms Control Association; (November 19th, “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation”, <https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation>)

The Nuclear-Cyber Connection These links exist because the NC3 systems of the United States and other nuclear-armed states are heavily dependent on computers and other digital processors for virtually every aspect of their operation and because those systems are highly vulnerable to cyberattack. Every nuclear force is composed, most basically, of weapons, early-warning radars, launch facilities, and the top officials, usually presidents or prime ministers, empowered to initiate a nuclear exchange. Connecting them all, however, is an extended network of communications and data-processing systems, all reliant on cyberspace. Warning systems, ground- and space-based, must constantly watch for and analyze possible enemy missile launches. Data on actual threats must rapidly be communicated to decision-makers, who must then weigh possible responses and communicate chosen outcomes to launch facilities, which in turn must provide attack vectors to delivery systems. All of this involves operations in cyberspace, and it is in this domain that great power rivals seek vulnerabilities to exploit in a constant struggle for advantage. The use of cyberspace to gain an advantage over adversaries takes many forms and is not always aimed at nuclear systems. China has been accused of engaging in widespread cyberespionage to steal technical secrets from U.S. firms for economic and military advantages. Russia has been accused, most extensively in the Robert Mueller report, of exploiting cyberspace to interfere in the 2016 U.S. presidential election. Nonstate actors, including terrorist groups such as al Qaeda and the Islamic State group, have used the internet for recruiting combatants and spreading fear. Criminal groups, including some thought to be allied with state actors, such as North Korea, have used cyberspace to extort money from banks, municipalities, and individuals.[4](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote04) Attacks such as these occupy most of the time and attention of civilian and military cybersecurity organizations that attempt to thwart such attacks. Yet for those who worry about strategic stability and the risks of nuclear escalation, it is the threat of cyberattacks on NC3 systems that provokes the greatest concern. This concern stems from the fact that, despite the immense effort devoted to protecting NC3 systems from cyberattack, no enterprise that relies so extensively on computers and cyberspace can be made 100 percent invulnerable to attack. This is so because such systems employ many devices and operating systems of various origins and vintages, most incorporating numerous software updates and “patches” over time, offering multiple vectors for attack. Electronic components can also be modified by hostile actors during production, transit, or insertion; and the whole system itself is dependent to a considerable degree on the electrical grid, which itself is vulnerable to cyberattack and is far less protected. Experienced “cyberwarriors” of every major power have been working for years to probe for weaknesses in these systems and in many cases have devised cyberweapons, typically, malicious software (malware) and computer viruses, to exploit those weaknesses for military advantage.[5](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote05) Although activity in cyberspace is much more difficult to detect and track than conventional military operations, enough information has become public to indicate that the major nuclear powers, notably China, Russia, and the United States, along with such secondary powers as Iran and North Korea, have established extensive cyberwarfare capabilities and engage in offensive cyberoperations on a regular basis, often aimed at critical military infrastructure. “Cyberspace is a contested environment where we are in constant contact with adversaries,” General Paul M. Nakasone, commander of the U.S. Cyber Command (Cybercom), told the Senate Armed Services Committee in February 2019. “We see near-peer competitors [China and Russia] conducting sustained campaigns below the level of armed conflict to erode American strength and gain strategic advantage.” Although eager to speak of adversary threats to U.S. interests, Nakasone was noticeably but not surprisingly reluctant to say much about U.S. offensive operations in cyberspace. He acknowledged, however, that Cybercom took such action to disrupt possible Russian interference in the 2018 midterm elections. “We created a persistent presence in cyberspace to monitor adversary actions and crafted tools and tactics to frustrate their efforts,” he testified in February. According to press accounts, this included a cyberattack aimed at paralyzing the Internet Research Agency, a “troll farm” in St. Petersburg said to have been deeply involved in generating disruptive propaganda during the 2016 presidential elections.[6](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote06) Other press investigations have disclosed two other offensive operations undertaken by the United States. One called “Olympic Games” was intended to disrupt Iran’s drive to increase its uranium-enrichment capacity by sabotaging the centrifuges used in the process by infecting them with the so-called Stuxnet virus. Another left of launch effort was intended to cause malfunctions in North Korean missile tests.[7](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote07) Although not aimed at either of the U.S. principal nuclear adversaries, those two attacks demonstrated a willingness and capacity to conduct cyberattacks on the nuclear infrastructure of other states. Efforts by strategic rivals of the United States to infiltrate and eventually degrade U.S. nuclear infrastructure are far less documented but thought to be no less prevalent. Russia, for example, is believed to have planted malware in the U.S. electrical utility grid, possibly with the intent of cutting off the flow of electricity to critical NC3 facilities in the event of a major crisis.[8](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote08) Indeed, every major power, including the United States, is believed to have crafted cyberweapons aimed at critical NC3 components and to have implanted malware in enemy systems for potential use in some future confrontation. Pathways to Escalation Knowing that the NC3 systems of the major powers are constantly being probed for weaknesses and probably infested with malware designed to be activated in a crisis, what does this say about the risks of escalation from a nonkinetic battle, that is, one fought without traditional weaponry, to a kinetic one, at first using conventional weapons and then, potentially, nuclear ones? None of this can be predicted in advance, but those analysts who have studied the subject worry about the emergence of dangerous new pathways for escalation. Indeed, several such scenarios have been identified.[9](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote09) The first and possibly most dangerous path to escalation would arise from the early use of cyberweapons in a great power crisis to ~~paralyze~~ undermine the vital command, control, and communications capabilities of an adversary, many of which serve nuclear and conventional forces. In the “fog of war” that would naturally ensue from such an encounter, the recipient of such an attack might fear more punishing follow-up kinetic attacks, possibly including the use of nuclear weapons, and, fearing the loss of its own arsenal, launch its weapons immediately. This might occur, for example, in a confrontation between NATO and Russian forces in east and central Europe or between U.S. and Chinese forces in the Asia-Pacific region. Speaking of a possible confrontation in Europe, for example, James N. Miller Jr. and Richard Fontaine wrote that “both sides would have overwhelming incentives to go early with offensive cyber and counter-space capabilities to negate the other side’s military capabilities or advantages.” If these early attacks succeeded, “it could result in huge military and coercive advantage for the attacker.” This might induce the recipient of such attacks to back down, affording its rival a major victory at very low cost. Alternatively, however, the recipient might view the attacks on its critical command, control, and communications infrastructure as the prelude to a full-scale attack aimed at neutralizing its nuclear capabilities and choose to strike first. “It is worth considering,” Miller and Fontaine concluded, “how even a very limited attack or incident could set both sides on a slippery slope to rapid escalation.”[10](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote10) What makes the insertion of latent malware in an adversary’s NC3 systems so dangerous is that it may not even need to be activated to increase the risk of nuclear escalation. If a nuclear-armed state comes to believe that its critical systems are infested with enemy malware, its leaders might not trust the information provided by its early-warning systems in a crisis and might misconstrue the nature of an enemy attack, leading them to overreact and possibly launch their nuclear weapons out of fear they are at risk of a preemptive strike. “The uncertainty caused by the unique character of a cyber threat could jeopardize the credibility of the nuclear deterrent and undermine strategic stability in ways that advances in nuclear and conventional weapons do not,” Page O. Stoutland and Samantha Pitts-Kiefer wrote in 2018 paper for the Nuclear Threat Initiative. “[T]he introduction of a flaw or malicious code into nuclear weapons through the supply chain that compromises the effectiveness of those weapons could lead to a lack of confidence in the nuclear deterrent,” undermining strategic stability.[11](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote11) Without confidence in the reliability of its nuclear weapons infrastructure, a nuclear-armed state may misinterpret confusing signals from its early-warning systems and, fearing the worst, launch its own nuclear weapons rather than lose them to an enemy’s first strike. This makes the scenario proffered in the 2018 NPR report, of a nuclear response to an enemy cyberattack, that much more alarming.

#### Cracking down on anticompetitive patent licensing post-*Qualcomm* reintroduces cybersecurity-enhancing competition to the market.

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IV. LESSONS AND POLICY DIRECTIONS The above discussion shows that patent protection can have mixed effects on national security: On the one hand, patents can encourage innovation that ensures domestic technological leadership and produces useful security-protective technologies; on the other hand, patents can stifle innovation-producing and cybersecurity-enhancing competition and can stymie the government’s own ability to achieve national security goals. To navigate the complex effects of patent policy on national security, policymakers may consider the following recommendations as guideposts. A. Anticompetitive Patent Licensing An area of particular concern should be the use of patents and patent licensing strategies to diminish competition or put up roadblocks to new entrants. Policymakers should certainly not support these abuses of the patent system, and indeed should take steps to prevent them. In the mobile communications space, patent licensing already plays an outsized role. There are reportedly between 250,000 and 314,000 patents on the smartphone alone, and litigation over cell phone technologies has lasted decades by now. Patents will thus inevitably have an impact on technologies like 5G or the Internet of Things, so the question is what that impact will be. Patents are supposed to encourage innovation, but research finds that patents alone will not do so; competition is another requirement. A 2015 study considered the impact of competition policy and patent strength on innovation among European firms, measured in terms of research and development spending.183 Initially, the study compared firms in countries with strong patent laws against those in countries with weaker patent laws, and found that patent protection has “no effect on R&D intensity,” a conclusion consistent with multiple other studies.184 However, the study found that when a major competition reform went into effect, strong-patent countries enjoyed a boost in innovation greater than that experienced in weak-patent countries.185 In other words, strong patent protection is complementary to strong competition; the former does not promote innovation without the latter. The practical import of this research is that patent protection is beneficial up to a point, but to the extent that patents—or, more commonly, legal strategies involving patents—overreach to suppress competition, that overreach should be cause for concern. Yet today, strategic patent behavior contrary to competition is prevalent. The Federal Trade Commission’s ongoing lawsuit against mobile phone chip manufacturer Qualcomm, for example, challenges Qualcomm’s practice of refusing to sell chips to any phone manufacturer who does not first pay a hefty sum for patent licenses—even if the manufacturer does not actually have need for all those licenses.186 To the extent that Qualcomm’s “no license, no chips” practice is in fact anticompetitive—that is what the courts overseeing the case will decide—monopolization of that market could substantially harm cybersecurity for the reasons noted above.187 The company’s about-50% market share in the advanced mobile chip market 188 means that there is a virtual monoculture of Qualcomm chips already, and there are ongoing concerns about security vulnerabilities in those chips.189 It is thus puzzling that some have opposed the FTC litigation on the grounds that it is making the United States “less competitive in the global 5G arms race.”190 As one scholar explains, this rhetoric “smacks of ‘national champion’ thinking” and ultimately fails to ensure that “national security warnings are being balanced against competitive imperatives.”191 With respect to emerging information technologies, policymakers should be concerned that a leading firm could undertake similar patent licensing strategies to control the market. Indeed, the district court in the Qualcomm litigation found that Nokia and Ericsson already “have imitated Qualcomm’s practice” because it is “more lucrative.”192

### 1AC---Plan

#### Plan: The United States federal judiciary should substantially increase prohibitions on private sector conduct that is more restrictive of competition than reasonably necessary to enable creation of information technology standards.

### 1AC---Framing

#### Nuclear conflict is underestimated, while survivors will be agents of destruction

Scarry 19, PhD, Professor of English at Harvard (Elaine Scarry, 2019, Interview, Representations, 146.1)

RA: At the Buffalo conference on pain, you gave a paper that built on some of the insights of your then most recent book, Thermonuclear Monarchy. 1 In the book, you demonstrate the incompatibility of democracy and nuclear arms at least in part on the grounds that, by the nature of their deployment, nuclear arms make it impossible for the populace to consent to their use. In your talk, you made a different but related claim that focused on the relative silence of the population regarding nuclear arms in the post-Cold War era. You were concerned, in particular, with the difficulties of imagining the consequences of nuclear war. I wonder if you could expand on this second point: why it is so hard to think about nuclear war. ES: The two points are deeply related. The architecture of nuclear arms requires that the population be eliminated from the decision about going to war. It also requires that Congress be eliminated from the decision about going to war—just because the nature of the technology requires a tiny number of people to do the launch. The result of that architecture is that people eventually, over seven decades, have internalized the fact that they’re worthless when it comes to the need to defend the country and to carry out acts of mutual aid toward one another. We now simply abandon the right of self-defense and the right of mutual aid and give unlimited injuring power to the executive branch of government and fall silent. RA: How much responsibility, how much blame, does one give to the population for remaining silent? ES: That has always been a question. Gandhi said, ‘‘You can wake a man who’s asleep, but you can’t wake a man who’s pretending to be asleep.’’ His statement marks a fork in the road. If the population has been anesthetized and is genuinely asleep, then they are morally innocent (even if infantilized and terribly reduced as moral agents). If instead the population is pretending to be asleep, we are morally culpable: the population is complicit with the genocide that’s standing in the wings waiting to happen. During my lecture and in many years of working on disarmament, I stressed the first path and tried to outline why waking up is difficult. In recent months, I’ve moved closer to the position that your question identifies, the responsibility of the population. I feel the force of Martin Luther King’s statement, ‘‘There comes a time when silence is betrayal.’’ I’m almost at the point of believing that there is a wanton refusal to [recognize] ~~see~~ the imminent peril, a refusal to understand not just that we have a responsibility to reverse it, to dismantle it, but that we have the ability to do so, and that if we don’t, it is going to happen. I don’t know if it’s going to happen this year. Or whether it’s going to happen this century. But it’s almost inconceivable that it isn’t going to happen. RA: Why is it that people have such a hard time understanding this? If you allow that people might honestly and ardently be trying to understand, what is it that is getting in the way? ES: Four or five answers come to mind. First, people often lack key pieces of information. If you ask someone in this country which nations have nuclear weapons, they are likely to say Iraq (which has none), Iran (which has none), or North Korea (which has fewer than 60; leading experts say fewer than 20). The United States has 6,500. The United States and Russia together own 93 percent of the world arsenal: the other 7 percent is owned by the other seven nuclear states—in order of numerical possession, France, China, the United Kingdom, Pakistan, India, Israel, and North Korea (see fig. 1). An equally profound misconception held by US citizens is the belief that our nuclear architecture is for ‘‘defense’’ and ‘‘retaliation.’’ In fact we have had a ‘‘presidential first-use’’ policy for the whole nuclear age. The profound obscenity of that arrangement, which has only begun to be glimpsed with the current president, has been an equally grave moral wrong from day one. Second, even when American ~~citizens~~ [denizens] and residents have this information, the outcome is derealized by its being future—that is, the unreality something has by having not yet happened is conflated with the unreality something might have by being merely imaginary. People, it’s true, are uninformed. But once they become informed, even then the flash of insight fades from their eyes after about ten minutes. RA: Why do you think that is? ES: Because they think ‘‘future’’ equals ‘‘unreal.’’ But we need to stop and understand what we mean by ‘‘future.’’ If it takes 10,000 steps to put a nuclear architecture into place, 9,999 steps have already been completed: we know how to split the atom; we know how to provide enriched uranium; we know how to deliver the bomb; we’ve completed not only the theoretical steps but the materialization steps: we’ve made the bombs; we’ve completed the delivery systems—Ohio-class submarines, the land-based ICBMs, and airdelivery B-2s and B-52s. Unlike in China and India, the weapons in the United States are already ‘‘mated’’ to the delivery systems; they are on alert; specific weapons have been assigned to specific cities in the countries of present enemies and, yes, even potential enemies. One step remains: the order to launch. So 9,999 steps are present and accounted for; one remains undone. While the 9,999 steps took vast amounts of time and resources, the last one is designed to be carried out in minutes. The word ‘‘future’’ does not apply to the 9,999 steps, only to the last one. When people decline to address the nuclear peril on the grounds that it is an ‘‘unreal’’ worry because ‘‘following the bombings of Hiroshima and Nagasaki it hasn’t yet happened,’’ they are unknowingly allying themselves with the position that our own Department of State and Department of Defense took in 1995. At that time, seventy-eight countries asked the International Court of Justice to declare the possession, threat of use, and use of nuclear weapons illegal on the basis of the humanitarian and environmental instruments such as the UN Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Protocols, the Declaration of Saint Petersburg, the Vienna Convention for the Protection of the Ozone Layer, the Rio Declaration on Environment and Poverty, and many others. Though the United States worked to invalidate the application of these protocols to our nuclear weapons one at a time, an argument they used over and over was that the firing of the weapons was ‘‘future,’’ hence ‘‘hypothetical,’’ hence ‘‘suppositional’’—this despite the billions of dollars that each year go into polishing and oiling the architecture of earth’s destruction to keep it in a present-tense state of constant readiness. RA: At the conference you also spoke about the problem of ‘‘statistical compassion.’’ ES: Let’s call that the third reason why the population is asleep. American indifference to our own genocidal nuclear architecture comes from the constraints on compassion when large numbers of people [become] ~~stand~~ to be injured. Public health physicians distinguish between narrative compassion (where one or two or three people are at risk) and statistical compassion (where thousands or millions are at risk).2 We’re fairly good at the first, and have many occasions to strengthen our capacity through daily acts of friendship and from reading literature. We’re terrible at the second, and have almost no training in strengthening our feeble abilities in this region. The nuclear peril of course entails the second: recent work on nuclear winter by Alan Robock and his colleagues shows that if even a small fraction of the current world arsenal is fired (one one-hundredth of one percent of the total available blast power), forty-four million people will be casualties on the first afternoon and one billion in the weeks following. The small shrug people make when the subject of nuclear weapons comes up—the little lift and fall of the shoulders—means they have just run a quick check on their interior brain-and-soul equipment and can report: nope, nothing in there in the way of statistical compassion. RA: Narrative compassion and statistical compassion seem to take place in widely separate spheres. How then do you see them coming into conflict with each other? ES: For me, a frightening example occurred in the Bulletin of Atomic Scientists, the wholly admirable body that sets the Doomsday Clock (now at two minutes to midnight) and that works round the clock to educate the people of the United States and the world about the hazards of nuclear weapons. Yet in commemorating the seventieth anniversary of the Nagasaki bombing in August of 2015, they published a historically factual narrative about the pilots of the plane delivering the atom bomb to Nagasaki, how many things went wrong and had to be repaired midflight. The lead-in read, ‘‘A typhoon was coming, the fuel pump failed, they had to switch planes, things were wired incorrectly, they missed their rendezvous, they couldn’t see the primary target, they ran out of gas on the way home, and they had to crash-land.’’ But the worst part was when ‘‘the Fat Man atomic bomb started to arm itself, mid-flight.’’3 The story, narrated in edge-ofyour-seat suspense, is an example of narrative compassion utterly preempting the possibility of statistical compassion: the crew might die, but if they had in fact died over the Pacific, tens of thousands of persons would not have been burned into nonexistence that day. RA: Your emphasis at the conference was on the nature of physical pain itself. ES: Yes, that was my central subject. In terms of our conversation now, we can say that a fourth and fifth reason for indifference arise from the difficulty of comprehending pain, whether it takes place in one person’s body or in the bodies of millions, and whether it occurs in the past, present, or future. (But if I were listing the reasons in the order of importance, these two would be near the top.) Once we exhaust a small handful of adjectives for physical pain, two (and almost only two) metaphors arise: the metaphor of the weapon (one may say it feels as though a knife is sticking in my shoulder blade even if it isn’t); and that of body damage (one may say it feels as though my elbow has snapped in two, even if it hasn’t). The Body in Pain concentrates on problems arising from the first; a later essay (‘‘Among Schoolchildren’’) concentrates on the second.4 Both metaphors, if carefully controlled, can help us understand the felt experience of another person’s pain; but both are highly volatile and can lead us far away from understanding. An example of the benign or genuinely expressive potential is provided by findings in neuroscience that we have mirror neurons that help us recognize another person’s physical pain. When you look at the actual experiments that were done, however, you see that the test subject is asked not to listen to a sufferer’s report of pain but to observe, for example, a pin being stuck into someone’s hand or the administration of a small electric shock. The experiments show not our comprehension of another person’s pain but our recognition of the aversivenes of being subjected to a weapon—often closely related to but by no means identical with physical pain. The very fact that a weapon can be separated from the site of the injury means that the attributes of pain can be lifted away from the sufferer and conferred on the agents inflicting the harm, so now it is not the pain that is world destroying but the inflictor of the pain. There are many examples of this in the case of nuclear weapons. For example, the mushroom cloud is often regarded as ‘‘awesome,’’ some even say ‘‘sublime.’’ But the hibakasha, the survivors in Hiroshima and Nagasaki, say, ‘‘We saw no mushroom cloud.’’ A mushroom cloud is what you see if you’re an observer far away, seated high in the sky in the airplane that dropped the weapon, or standing on the ground scores of miles beyond the radius of the harm. Like any sensible mortal, I admire J. Robert Oppenheimer, but his endlessly quoted statement following the Trinity test, ‘‘I remembered the line from the Hindu scripture ...I am become Death, the destroyer of worlds,’’ allows the scale of the injury to be transferred across the weapon and conferred on the agents, who now perceive themselves as magnificent, thrilling, almighty in their power. Oppenheimer even prefaces the quotation by saying that Vishnu here takes on a multi-armed form ‘‘to impress’’ the prince. The name he chose for the test, ‘‘Trinity,’’ shows this same fabrication of godlikeness. What if instead Oppenheimer had said, ‘‘I remembered the goddess Guanyin whose name means ‘The one who perceives the sounds of the world’ and the sounds I heard were excruciating cries, unbearable shrieks of tens of thousands scalded together in an instant of molten flesh.’’ The first statement is a fiction: Oppenheimer is neither a multi-armed god nor a three-personed god; the second statement (could we hear Guanyin) is accurate; if we could internalize and practice the second statement, we would disarm immediately. The image of the nuclear weapon, which might help make visible the pain and suffering it will bring about, instead captures the gigantic scale of the suffering, only to lift that ‘‘giganticism’’ away from the site of suffering altogether and confer it on the human agents—ordinary men, small in stature and in number, but who now appear gigantic. Insofar as any shred of ‘‘suffering’’ still remains visible, we believe it is the suffering of the nowgigantic human agent who is in mighty peril. Thus the nation spends billions of dollars on a presidential fallout shelter while convincing the public that fallout shelters for the population are ridiculous. In Thinking in an Emergency, and again in Thermonuclear Monarchy, I contrast the Swiss shelter system—Swiss law requires that every house have a fallout shelter;5 the law was reaffirmed in a 2003 referendum that had an 80 percent turnout at the polls—with the staggering constructions that have been made in the United States for... the people? no—for the president and those close to him, a shelter inside a mountain, with buildings and a lake that is, according to observers, large enough for waterskiing. One country, Switzerland, believes in what the Swiss call ‘‘equality of survival’’; the other country, the United States, believes that only the agents of nuclear [disaster] ~~holocaust~~ deserve the chance for survival. Much more detail on the multiple presidential fallout shelters is described by Garrett M. Graff in a recent book, Raven Rock: The Story of the U.S. Government’s Secret Plan to Save Itself—While the Rest of Us Die. The nuclear architecture requires that either the weapon be invisible (buried in a submarine or buried in a cornfield, like the 450 ICBMs) or, when it is visible, it must become the path across which the magnificent prowess of the human agent is seen—he’s so thrilling, so important, so vulnerable; here, please, take my tax money, use all of it to protect the man who will launch our nuclear missiles. What should bring us to our knees in sorrow and shame instead brings about a dutiful salute to the thermonuclear monarch. If one thinks fallout shelters for the population are ridiculous (ignoring the fact that the medically sophisticated Swiss have data showing otherwise), then it is informative to contrast the money lavished on our nuclear architecture with ordinary forms of safety structures for the population like bridges, dams, roads, levees. The American Society of Civil Engineers, in their 2017 report on infrastructure, gave our bridges a ‘‘Cþ’’ (56,000 are ‘‘structurally deficient’’), our dams a ‘‘D’’ (2000 have a ‘‘high-hazard potential’’), our levees a ‘‘D’’ ($80 billion is needed for structural repair), and our roads a ‘‘D’’ (one out of every five miles of highway pavement is ‘‘in poor condition’’).6 Might Americans be given a choice on whether they want their taxes spent on infrastructure or—as is currently the case—on nuclear weapons and presidential fallout shelters? Or has ‘‘no taxation without representation’’ disappeared along with all our other basic democratic principles?(112-118) RA: That all follows from the instability of the weapon; what about the second field of representation, body damage? ES: The phenomenon of body damage is like the image of the weapon but works in a much different way—almost the opposite. Whereas the problem of the weapon is its very separability from the body (and the way to make it benign is to retether it to its referent in the body), the problem of body damage is that it overlaps, overrides, and eclipses the personhood of the one underneath the damage. Either one looks away, or, if one looks, one recoils. Visual artists and writers—from Peter Paul Rubens and Andrea Mantegna in the Renaissance to fin de sie`cle artists Ka¨the Kollwitz, Aubrey Beardsley, Edvard Munch, Joris-Karl Huysmans, to twentieth-century Guatemalan writer Miguel Asturias—all solve this problem by finding a way to double the location, so that personhood remains intact in our perceptual field even if the human body is at that moment being obscenely shredded. 118 Representations If you visit the Nagasaki Atomic Bomb Museum, you will probably find yourself, as I did, surrounded by young schoolchildren, who look with courage on the visages of those who were incompletely incinerated in the bombing of that city (see figs. 2, 3, and 4). In the United States, few adults face up to the faces of those harmed there. In February of 2016, the Central Square Library in Cambridge agreed to let me—and Joseph Gerson, an American Friends Service colleague—do a monthlong program on the bombings of Hiroshima and Nagasaki with weekly lectures and an exhibit of books, drawings, and photographs. The morning after we put up the exhibit, we found all the photographs of injuries had been removed. The effort to put on an exhibit about Hiroshima and Nagasaki at the Smithsonian Institution in 1994 led to such controversy that it had to be canceled—with one exception: the Enola Gay (the plane that delivered the bomb) was put on display. Here we circle back to the phenomenon of the weapon being perceptually severed from the site of the pain. It’s in part because of museums like those in Hiroshima and Nagasaki that so many people in the Japanese population are passionately in support of nuclear disarmament. In preparation for a disarmament demonstration in New York, Cambridge and Boston activists (I include myself) worked for months to bring supporters to the march: after endless work, approximately one hundred did so. But one thousand Japanese men and women arrived that morning in New York; they carried a petition signed by six million of their countrymen, who collectively paid for the travel costs of the thousand who came. RA: Can you provide any examples of authors who ‘‘double the location,’’ as you have just described, ‘‘so that personhood remains intact’’ while the ‘‘human body is being ...shredded’’? ES: Miguel A´ngel Asturias’s Men of Maize begins with a heroic Indian in Guatemala, who ordinarily protects his people no matter what; he is able to do so, in part, because he has a level of sensory acuity that approaches genius. He knows the scent of every flower; he can discern the whole recipe of scents present in the forest in any given moment. The European colonizers can commit a slaughter of his people only if they can divert this heroic leader; and the only way to divert him is to subject him to horrible, scalding, obscene pain. Asturias must convey to us the felt experience of pain, the turning of the body inside out, and he chooses to do this through the associated phenomenon of body damage; but in order to do so without eclipsing the personhood of Gaspar Il´om, he decouples the body damage from the hero. The book opens with a dog, which the invaders have used as a test case for their pain-inducing poison laced with glass. The dog, in excruciating pain, zooms hysterically through the village square, covered with open sores, his penis erect, howling in a way that is aversive to everyone who hears and sees. This horrible scene conveys the obscenity of pain, the obscenity of bodily damage. By obscenity, I mean interior substances in the body which come before us without our consent, come before us before we are mentally prepared to comprehend what we are seeing. But the story separates this bodily desecration from the person, for now, having seen the dog, we need only be told that Gaspar Il´om has drunk this glass-laced poison to understand why he abandons his post, submerges himself in the lake, drinks all its waters, and eventually comes out. He has survived. But during the moments when he disappeared below the surface of the water, his people have been slain. RA: I wonder how you think about the role of the visual in that context. Do you think of the visual as akin to a language? ES: In visual art one can see the same phenomenon taking place, as when Ka¨the Kollwitz refuses to let an injured victim be portrayed as what Shelley called ‘‘a monstrous lump of ruin.’’ In her 1900 etching and aquatint The Downtrodden, she pushes the wounds on the body just beyond the body’s edge onto a linen sheet on which the person is lying. These mouthlike, liplike structures of open wounds are there but are not permitted to compromise figure 4. Photographs of survivors of the atomic bomb in the Nagasaki Atomic Bomb Museum. An Interview with Elaine Scarry 121 our recognition of the sufferer’s personhood. Even somebody like Aubrey Beardsley, in one of his posters, puts the wound in a tree rather than on the body of the woman. And yet the woman has attributes that make the viewer see the analogy, just like Marty South and the trees in your account of Hardy’s The Woodlanders [Scarry is referring to Rachel Ablow’s account in Victorian Pain]. Her posture, for example, is exaggeratedly erect and treelike. She wears a high-waisted skirt that is made to be a visual analogy with the tree. But our perception of her personhood remains uninterrupted. RA: One issue you have raised recently is the particular difficulty of thinking about the specific kinds of injuries caused by nuclear war, namely burns. There was a striking moment in your talk when you discussed the protocols used in burn units to help doctors and nurses in looking at burn victims. It seems so intuitively right that caretakers would have difficulty looking at these patients. It seems to suggest something about the limits on the imagination in terms of suffering. I’m wondering what it is about burns that makes it so hard to imagine the suffering they entail. Is it about the skin as the site of humanity? Is it about the face? ES: It is the visage. Without preparation and help, when we see the complete mutilation of the body, especially the face, we mistakenly feel we are seeing the mutilation of personhood. The ‘‘rule of nines’’ is devised to enable rescue workers to look at a gravely burned person and (instead of having their own minds shut down in sorrow and confusion and revulsion) to assess instantly the gravity of the injury, start appropriate treatment, and report the scale of the injury to the hospital awaiting the person’s arrival. Each part of the body is assigned an easy-to-remember number that is a multiple of nine (see fig. 5). Counting forms a key part in many forms of emergency rescue, and this is one instance. The numbers, once totaled, tell the rescuer the next step, such as whether to insert an IV for fluid resuscitation. The need to train the perceptions of those who hope to help those who are burned is also illustrated by a procedure called ‘‘staying.’’ During the years when I was part of a research group on suffering at the Hastings Center for Ethics, I heard a lecture by a physician-nurse who worked in a burn unit. She mentioned that because of the difficulty oflooking at a severely burned person, nurses assigned to burn units may begin to avert their eyes when speaking with a patient, decline to touch the patient, or stand at a greater distance each day, or request a transfer after a few days. To counteract these problems, caretakers can participate in a class on ‘‘staying’’ where they recognize the temptation to withdraw from the patient and practice trying to overcome that withdrawal. While the ‘‘rule of nines’’ and ‘‘staying’’ are brilliant inventions, we should recognize that in nuclear war there will be few rescue workers and nurses. A study in the Netherlands of what would happen if a terrorist brought into Rotterdam a very small 12 kg weapon (the size used in World War II) found that of those who had not immediately evaporated, four thousand persons would require burn beds.7 They noted that in all of the Netherlands there are only a hundred burn beds. A leading hospital in Boston, Mass General, has seven burn beds. The burn beds themselves—what few there are—will disappear in a nuclear strike. On the floor of the UK Parliament, the possession of four Trident submarines has repeatedly been justified by the potential need to bomb Moscow. In response, a Scottish study by John Ainslie looked at the scale of damage that would actually take place if a nuclear missile were launched against the Ministry of Defense building in Moscow: along with the Ministry of Defense, four major hospitals would be destroyed and four others subjected to fire and radiation that would make them inoperable. Thirty-one schools would also be destroyed with at least 700,000 children slain.8 If the missile is larger, so, too, will the disappearance of hospitals be larger. An article by Steven Starr, Lynn Eden, and Theodore A. Postol in the Bulletin of Atomic Scientists shows that if an 800-kiloton weapon were detonated above Manhattan, the center of the blast would be four times the temperature of the sun, and, within ‘‘tens of minutes,’’ a firestorm will cover 90 to 150 square miles. figure 5. Pocket card showing ‘‘Rule of Nines for Adult and Child,’’ Northwest Healthcare Response Network, https:// nwhrn.org/wp-content/ uploads/2018/08/BurnPocket-Card.pdf. An Interview with Elaine Scarry 123 RA: Was the artistic strategy that you just described of doubling the location so as to protect personhood apparent in the real-world examples you were citing, the Nagasaki children, the ‘‘rule of nines,’’ ‘‘staying’’? ES: I think so. It is not accidental that the Nagasaki Atomic Bomb Museum is itself physically beautiful in its architecture, or that as you enter you pass lavish cascades of paper cranes, inspired by the child Sadako Sasaki, like cherry blossoms in spring, or that you see an inscription about Nagasaki’s exceptional generosity to outsiders—its many centuries of open trade with foreign companies, a level of cosmopolitan hospitality not at that time found to the same degree in other regions of Japan; you see engraved inscriptions from Dwight D. Eisenhower and from the ‘‘United States Strategic Bombing Survey, Summary Report (Pacific War), July 1946’’ saying unequivocally that the atom bomb was not needed to end the war. All these elements, and many others, keep the personhood of the city’s inhabitants in view, side-by-side with the excruciating vision of burnt faces. The ‘‘rule of nines’’ lets one reconstruct the body out of a beneficent invention, toylike in its simplicity. In ‘‘staying,’’ the very name of the procedure holds the injury within the frame of sympathetic personhood. RA: Let’s return to Ghandi’s forking path. You’ve sketched the reasons why the US population is innocently sleeping. But what if they’re feigning sleep? ES: I am sometimes floored by the discrepancy between the attention we give to injuries that have happened when we can’t do anything to change them and the attention we give to injuries that haven’t yet happened when by intervention we absolutely can prevent them. I don’t know how to explain this. I have always assumed that those acts of trying to talk about the pain of torture victims in the 1970s in my case, or the pain of people in World War II, the Holocaust, that those acts are meant to act as a warning to the future. What is our motive for thinking about the unchangeable injuries of the past if not to increase our ability to prevent such injuries in the future? Yet almost incomprehensible is the distance between the willingness to think about events from the past we can’t possibly change and the complete comfort with feeling that future massacres need not concern us. Or worse, that one is slightly superior to protesting a wrong: intellectually superior because the moral wrong is an obvious moral wrong, and we only like to address sophisticated, hard to discern moral wrongs. It might be embarrassing to have to stand on a street corner with a sign or attend a public meeting. Imagine, though, if we forgave the complicity with past acts of enslavement or genocide by saying, ‘‘People saw that it was wrong, but they considered it too intellectually obvious, too compromising of their dignity, to have to stand up and protest.’’ Or take the argument that the aspiration to dismantle nuclear weapons is now many decades old, and we must turn to fresh undertakings: imagine that someone tried to defend those who tolerated slavery in 1860 because they had been hearing antislavery sentiment since 1820 and now considered such sentiments ‘‘stale.’’ We would never give a ‘‘pass’’ to anyone in the past who excused their inattention to slavery or the ~~transfer of people to concentration camps~~ on either of those two grounds; yet we believe such arguments release us from addressing weapons whose outcome is instant genocide. There are historical periods in which people were dissuaded from protesting because dissidents were beaten (Charles Sumner on the floor of the Senate) or killed (Dietrich Bonhoeffer in Germany). No such beatings or death threats excuse our own silence today. RA: Staying with this point about the relative ease of imagining pain past as opposed to pain in the future, do you attribute that to sentimentality? It sounds so reprehensible put in those terms. I wonder how you account for it. ES: I think you are right to worry that our attention to the past begins to look like sentimentality. The argument is sometimes made by academics that sympathy is less about compassion or the desire to ameliorate pain than it is a kind of cultural signaling of our moral goodness. To me that thesis seems horrifying: it lets the many who ignore past pain excuse their own inattention on the grounds that the few who do attend to pain are only doing so to announce their own goodness. So I feel a strong aversion to that argument; it works to reduce still further the number of those who show any wish to help. However, if it turns out that we only speak about irremediable injuries from the past while a huge architecture of massacre [is] ~~stands~~ waiting to be used, then one has to ask oneself: why were we looking at injuries in the distant past? Is it just sentimentality? Is it just cultural signaling?9(124-5)

#### Default to consequentialism

Sikkink 8, Professor of political science at the University of Minnesota (Kathryn Sikkink, 2008, “The Role of Consequences, Comparison, and Counterfactuals in Constructivist Ethical Thought,” <http://www.polisci.umn.edu/centers/theory/pdf/sikkink.pdf)>

Ethical arguments of these different types are ubiquitous and necessary. But because they are also slippery and open to manipulation and misuse, we also need to be very careful and precise about how we go about using them. I would recommend that first we distinguish very carefully between the comparison to ideals and historical empirical comparison. I believe that many critical constructivist accounts rely on the comparison to the ideal or to the conditions of possibility counterfactual argument. In almost every critical constructivist work there is an implicit ideal ethical argument. This argument is implicit because it is rarely clearly stated, but it is found in the nature of the 36 critique. So, for example, in her discussion of U.S. human rights policy, Roxanne Doty critiques a human rights policy carried out by actors who sometimes use it for their own self aggrandizement and to denigrate others. 42 The implicit ideal this presents is a human rights policy that is not used for denigration or surveillance or othering those it criticizes or conversely, of elevating those who advocate it. What would be examples of such a policy? The book does not provide examples. We do not know if examples exist in the world. So the implicit comparison is a comparison to an ideal – a never fully stated ideal, but one present in the critique of what is wrong with the policies discussed. Nicolas Guilhot makes a similar argument in his recent book. The promotion of democracy and human rights, he argues, are increasingly used in order to extend the power they were meant to limit. “The promotion of democracy and human rights defines new forms of administration on a global scale and generates a new political science.” He historically examines how progressive movements for democracy and human rights have become hegemonic because they “systematically managed to integrate emancipatory and progressive forces in the construction of imperial policies.” But once again, the book offers no alternative political scenario. In the final sentence of the book, the author clarifies that “this book has no other ambition than to contribute to the democratic critique of democracy.” 43 In the introduction, he clarifies, “This book does not provide answers to these dilemmas. At most, its only ambition is to highlight them, in the hope that a proper understanding constitutes a first step toward the invention of new courses of action.”44 Ethically, I believe this is a cop-out. Politically and intellectually, I find it too comfortable and too easy. This critique has a crucial role to play in pointing to hypocrisy (as Price highlights in the introduction). It could also serve as a catalyst for policy change in the direction of policy that would include less surveillance or less cooptation of human rights discourse. But it is unlikely to serve as a catalyst for new action or policy change unless it ventures something more than pure critique, unless it risks a political or ethical proposal. Without that, it has the impact of delegitimizing any human rights policy without suggesting any alternative. Any policy to promote human rights of democracy policy is shown to be deeply flawed or even pernicious. It is portrayed as part of the problem, certainly not as offering any kind of solution. Human rights policy appears to make the situation worse, not better. The critique has the effect of telling us clearly what we do not want, what we can not support—human rights policies by imperfect and hypocritical actors like the U.S. In its historical comparisons, it also lumps human rights policy together with colonialism and does not provide any elements to distinguish between one policy of surveillance and other. All are equally flawed. The ethical effect is to remove normative support from existing policies without producing any alternatives. This is similar to what Price means when he says that “critical accounts which do not in fact offer constructive normative theorizing to follow critique ironically lend themselves to being complicit with the conservative agenda opposing erstwhile progressive change in world politics.” Neither Doty nor Guilhot, for example, contrast two human rights policies to give examples of policies that are more of less hypocritical or where there has been more or 44 Guilhot, p. 14. 38 less surveillance. They don’t contrast human rights policies or democracy promotion policies to previous policies that were also hypocritical and self aggrandizing, but more pernicious – e.g. national security ideology and support for authoritarian regimes in the third world. By presenting no contrasts, the critique would appear to say that there is no ethical or political difference between a policy that supports coups and funds repressive military regimes and a policy that critiques coups and cuts military aid to repressive regimes. These policies would appear to be ethically indistinguishable. Indeed, by these standards, a realist policy (a la Kissinger) might be preferable. Kissinger didn’t denigrate his authoritarianism allies. He took regimes as they were. He treated them as valuable allies. He didn’t lecture them on how they should change. He also, in doing so, encouraged, in some cases, coups and mass murder. But at least he didn’t “Other”. Doty and Guilhot give me no ethical criteria to distinguish between the policies of the Kissinger administration, the Carter administration, and current Bush administration policy. Because the comparison is an implicit ideal, never an empirical real world example, the critique is very telling and can delegitimize the critiqued policy. But nothing is put in its place. So, it demobilizes any support we might have for any human rights policy. It puts the analyst in an ethically comfortable position, but by not proposing any explicit comparison, it demobilizes the reader. We learn what to oppose, to critique, but we don’t learn explicitly what to support in its stead. The result can be political paralysis. One finds it difficult to act.

#### Our analysis is uniquely good in the instance of cyberwar — because it hasn’t happened, scholarship must deploy future scenarios and allows us to find external explanatory variables

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Theory Building and Development

The structured analysis of future counterfactuals offers a unique approach for the study of causal effects in social systems. The first category, and perhaps most significant, is the ability of researchers to use scenarios to identify variables of interest and consider ways to measure them. This is an approach sometimes recommended for qualitative research; it consists of writing a notional depiction of what a case study might look like. This exercise helps researchers to think through what variables are of greatest interest, what values those variables might take on, and how they interact to cause values of the dependent variable. Scenario analysis is one way in which researchers may conduct such a notional case study. Rather than introduce a timeless or historical vignette regarding fictional circumstances, the researcher may find it beneficial to place their case in the future. This helps orient the research project toward current and anticipated political issues—thus increasing the relevance of the work—even if the actual case studies are historical. Thinking through the causal process in this way helps the researcher to identify a wider range of explanatory variables, including those that have not yet occurred or may be of very low probability (but are still consistent with existing or proposed theoretical arguments). Scenario analysis also helps the researcher to consider the range of values that the identified independent variables may take on, as exploration of different “worlds” pushes the boundaries of the researcher's predispositions going into the research project. Robust scenario analysis thus helps the researcher to identify the upper and lower bounds of their theory. Second, a commonly cited advantage of counterfactual reasoning that is useful for this process of theory building is a researcher's attempt to manipulate one variable in a causal process while holding others constant, thus isolating the effects of different values of the independent variable on the dependent variable. Manipulating one variable at a time to do a better job of analyzing causal processes is often very difficult to do, as, in the real world, interactions between variables often lead to unpredictable and nonlinear outcomes (Jervis 1997:34–60). For instance, a scholar conducting an analysis of tax rates and other domestic legislation regarding oil may use a counterfactual of a different average oil price in the 1970s. Such a counterfactual would have some fairly obvious implications for the domestic political question, but a world in which that one variable were manipulated would have a large number of equally plausible second- and third-order consequences for regional politics in the Middle East. Those consequences could conceivably feed back into domestic US politics, thus affecting the social system under analysis in a way the researcher may not have controlled for in the original scenario. Despite these acknowledged difficulties in using a “manipulate one variable” approach for the purpose of assaying real-world policy options, it is a useful input to the processes of building theory and research design. The best defense of such an approach is that all forms of modeling involve abstractions from reality, and even highly unrealistic models—such as James Fearon's famous ideal condition in which war should never occur—are useful for studying real events (Fearon 1995). Furthermore, manipulating one variable at a time is more appropriate to some kinds of counterfactual reasoning than others. Consider the three main categories of scenario use: political narratives, game theory and formal modeling, and experimentation. The “manipulate one variable” approach seems least useful to political narratives, which often try to tackle such tough questions as “What is the future of the international system?” Although scenarios offer advantages to developing and extending theory in regard to these sorts of questions, particularly in assessing key drivers and articulating world views (discussed in the next subsections), a scientific approach of controlling for various social factors is unlikely to succeed. In these projects, manipulating one variable at a time serves only to develop one of many possible futures in the interest of extending the range of the theory's explanatory power. On the other hand, the “manipulate one variable” approach offers more direct advantages for formal modeling and experimentation. The reasoning for each follows a comment made by Elinor Ostrom in her 1997 American Political Science Association presidential address. Ostrom suggested that “from…scenarios, one can proceed to formal models and empirical testing in field and laboratory settings” (Ostrom 1998). The experimental method with human subjects benefits strongly from the use of scenarios. In one study of how values factor into Americans' economic decision making, a team of researchers sought to “attribute significant differences in average responses between conditions to the independent variables manipulated in the hypothetical scenario; that is, to the factors intuitive neorealists should weigh heavily and intuitive economists should weigh lightly” (Herrmann, Tetlock, and Diascro 2001). That is to say, one variable related to individuals' world views could be manipulated at once in the experiment, and the researcher may test for the significance of variance between the test and control groups. After using scenarios to better identify variables of interest and the role of their specific values in a causal process, a third category of applications of scenario analysis to theory building is to develop new hypotheses and ways to test them. This follows from using scenarios to identify new independent variables and how their values may effect changes on the dependent variable; each new causal argument may (and should) be expressed as a hypothesis to be tested in the broader research project for which the scenario analysis was developed. Additionally, “day-after” scenarios that seek to walk back the causal processes that may have led to a consequential event are particularly well suited to developing hypotheses (Holmes and Yoshihara 2008). By definition, this type of scenario analysis seeks to discover causal pathways. For instance, one might seek to chart various paths by which a particular type of social revolution may occur in a country of interest. Each narrative of how such a revolution could come to pass would result in at least one hypothesis regarding the links between the many variables of interest. These hypotheses may then be tested against historical data or used to develop new kinds of data collection methods (discussed further in the next section). Finally, scenario analysis helps to explore completely new theoretical projects in a deductive way, whereas a great deal of qualitative work in political science tends to be inductive from the case study method. The use of scenario analysis may help scholars to pursue an “abductive,” or hybrid, method of theory building that draws on both deductive reasoning and insights from cases (Mayer and Pirri 1995). For example, a data-poor research subject, such as how states may respond to computer network attack, has few historical precedents (Mahnken 2011; Rid 2012). If a researcher were interested in identifying the circumstances under which states are more likely to resort to violence in response to cyber attack, he would be confounded by the problem that never in history has a state responded with violence to such an attack. Scenario analysis beginning with the value of violent counter-attack on the dependent variable (the DV being a state's strategy choice) would help the researcher to deduce likely circumstances under which such an outcome may occur. Historical analysis, such as regarding other kinds of information threats, would be helpful for such a project, but the differences between cyber and other kinds of information transmission would result in an incomplete causal narrative based on inductive reasoning alone. Data-Poor Research Topics Scenarios are a useful method for theory building and research design for topics that, despite being of high importance, lack an empirical base. The best example of this type of research is scholarship on nuclear warfare. An enormous literature evolved during the Cold War regarding how a nuclear war might be fought and how escalation dynamics might occur (Kahn 1962; Brown and Mahnken 2011). This literature was based almost exclusively on future counterfactuals, as there were no nuclear wars to study and a very low “n”—consisting of the Cuban Missile Crisis and very few other crises—for publicly acknowledged “close calls” (Sagan 1995). Indeed, in our survey of the use of scenarios in the discipline, more than 25% were about nuclear warfare. Other topics that are of high importance but have a very low or zero “n” include great-power war, global epidemics, climate change, large-scale cyber attack, and weapon of mass destruction terrorism. The points made earlier regarding the identification of new variables and hypotheses are relevant here. In addition to these advantages to new research topics, scenario analysis helps to identify new sources of data. This is partially because scenarios help to identify new independent variables, thus leading the researcher to think about how to measure their values, but also by helping him to think of proxies for measurement when direct observation is not possible. For instance, a day-after analysis of a scenario of interest would cause the researcher to ask what he would have needed to know to predict the occurrence of the future counterfactuals and in turn help the researcher to think about ways in which the discipline could identify that low-probability process if it begins to happen in the real world.

#### Analysis of cyberspace is crucial — our scholarship is part of an iterative process that enables scholars and policymakers to halt future cyberwars

Demchak 14 — Chris C. Demchak Codirector, Center for Cyber Conflict Studies (C3S) United States Naval War College Newport, RI, USA Jan-Frederik Kremer · Benedikt Müller Editors 1 3 Cyberspace and International Relations Theory, Prospects and Challenges

In one further area of note, this book captures several debates as they stand today, as well as possibly new elements of an emergent lexicon. The chapters with calls for “norms” to be developed and, by inference, imposed by the senior nations of the global deeply cybered community of nations such as the US are part of a widely circulating variety of arguments about how and who might best nurture a less conflictual cybered international system. It is to be expected that this book would reflect those discussions. Several interesting chapters, however, offer new terms useful in decomposing the cognitive and structural complexity of cybered conflict. If the terms capture a complex process in a short form or image such as “lawfare7 ” or “cyber Westphalia,8 ” then a form of ‘semantic infiltration’ slowly alters the perceptions of scholars and activists alike and open up cognitive opportunities for new theorization and new strategic discussions. In particular, Matthew Crosston (“Phreak the Speak: the Flawed Communications within Cyber Intelligentsia”) offers the term, a “Chinese knowledge wall,” to capture the enduring dichotomy between the technically literate and the political systems focused scholars and practitioners long noted by the scholars of the large-scale socio-technical systems (LTS) literature such as Mayntz and Hughes, Comfort, and LaPorte, among others9 . Crosston argues that this dichotomy is particularly influential in an increasingly conflictual cybered international system because the intellectual and cognitive barriers also inhibit progressive cooperation between domestic communities, and inevitably between nations

#### Policy debates over antitrust are valuable

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IV. Antitrust in Civil Society

Competition issues are also part of the general civic discourse separate from the campaign rhetoric and legislative proposals offered by politicians. This is also a significant sign that antitrust has begun to be an important source of small “p” politics that engages substantial segments of the public at large. One example is the increased number of non-technical books intended for a lay audience that deal with the role of antitrust in a healthy economy and democracy. Recent and forthcoming books dealing with these themes include Tim Wu’s “The Curse of Bigness,”109 Matt Stoller’s “Goliath,”110 Maurice Stucke and Ariel Ezrachi’s “Competition Overdose,”111 Zephyr Teachout’s “Break ‘em Up,”112 and David Dayan’s “Monopolized.”113 On the academic side, there are a plethora of government and NGO studies of competition policy on digital competition114 and new works are flourishing which explore the broader ramifications of antitrust and competition in society.115 Long form and more mass-market journalism have also taken up the mantle of exploring the role of antitrust and competition policy. Such diverse magazines as The Atlantic,116 Time, 117 New Republic,118 American Prospect,119 Rolling Stone,120 New York Times magazine,121 Variety,122 National Review, 123 Foreign Policy,124 and other policy and opinion magazines have all run recent stories or profiles of individuals involved in antitrust issues. Before the COVID-19 pandemic effectively monopolized press coverage in the United States, there were thirty-three antitrust related stories on the front page of the New York Times or the front page of its business section over a three-month period in late 2019. 125 A majority of the stories focused on tech giants such as Apple, Microsoft, Google, Amazon, and Facebook.126 In addition, the New York Times also covered stories about mergers, merger policy, local issues such as the Chicago taxi market, and various smaller industries.127 This is separate from coverage during the same period of campaign issues and candidate statements relating to the field. A similar increase in coverage during this same period can be observed anecdotally in more business-oriented publications like Forbes, Barron’s, Wired, and the Wall Street Journal; general newspapers like USA Today, Washington Post, and Huffington Post; more local newspapers; as well as radio and television.128 Web pages and social media accounts on these issues have similarly proliferated on all ideological perspectives.129 Lobbying and public policy groups are growing in number and influence. Beyond the traditional trade associations and general think tanks there are now a number of active groups with antitrust as a large part of their focus. These include the Open Markets Institute, 130 American Antitrust Institute, 131 Anti-Monopoly Fund,132 Institute for Self-Reliance,133 Public Citizen,134 Public Knowledge,135 Demos, 136 and the International Center for Law and Economics.137 At the more technical legal end of the debate, antitrust is similarly flourishing as a field. One sees increased law school hiring in the field for the first time in decades. Academic institutes and centers abound with a wide variety of perspectives ranging from libertarian to enforcement oriented.138 Most major antitrust cases now feature multiple amicus briefs from legal and economic experts on both sides of an issue both in the Supreme Court or the Courts of Appeals.139

Conclusion

Antitrust has always been political in nature. Antitrust law provides broad legal commands dealing with how governments and private individuals can challenge different types of market behavior. In this way, antitrust has not changed. Antitrust will never take the place of sports, the Dow Jones index, or the weather for conversation at the breakfast table, but it has become a meaningful part of the political and policy debate for candidates, the legislature, and important segments of civil society. What has changed, however, is the degree that antitrust has reentered the political arena. Once mostly the domain of technocrats, antitrust issues have been proposed and debated by Presidential candidates, political parties, legislators, pundits, journalists, lobby groups, and voters alike. There are also a flurry of serious proposals and investigations that would make significant changes to the current system if adopted. This is all to the good. Even if none of the current proposals come to fruition, the antitrust debate is part of a broader engagement with political economy issues dealing with fundamental concerns such as economic concentration, globalization, income inequality, social and racial justice, and even recently the proper response to the COVID-19 emergency. The many proposals, initiatives, and pressure groups represent at a minimum the return of antitrust as part of the progressive agenda.

# 2AC

## Case

## Off-Case

### 2AC ⁠— AT: No Progress

#### Their narrative of “[no progress]” is affectively appealing, but historically wrong ⁠— major gains have achieved; the political implications of their ethics cause violence

Winant 15, Professor of Sociology at UC-Santa Barbara (Howard Winant, 1-29-2014, “The Dark Matter: Race and Racism in the 21st Century,” Critical Sociology 2015, Vol. 41(2), page 313–324)

The World-Historical Shitpile of Race

Structural racism – an odious stinkpile of shit left over from the past and still being augmented in the present – has been accumulated by ‘slavery unwilling to die’,4 by empire, and indeed by the entire racialized modern world system. The immense waste (Feagin et al., 2001, drawing on Bataille) of human life and labor by these historically entrenched social structures and practices still confronts us today, in the aftermath of the post-Second World War racial ‘break’. Our antiracist accomplishments have reduced the size of the pile; we have lessened the stink. But a massive amount of waste still remains. So much racial waste is left over from the practice of racial domination in the early days of empire and conquest, to the present combination of police state and liberalism! Indeed it often seems that this enormous and odious waste pinions the social system under an immovable burden. How often have despair and hopelessness overcome those who bore this sorrow? How often have slave and native, peon and maquiladora, servant and ghetto-dweller, felt just plain ‘sick and tired’ (Nappy Roots, 2003), encumbered by this deadening inertia composed of a racial injustice that could seemingly never be budged? How often, too, have whites felt weighed down by the waste, the guilt and self-destruction built into racism and the ‘psychological wage’? Yet racial politics is always unstable and contradictory. Racial despotism can never be fully stabilized or consolidated. Thus at key historical moments, perhaps rare but also inevitable, the sheer weight of racial oppression – qua social structure – becomes insupportable. The built-up rage and inequity, the irrationality and inutility, and the explosive force of dreams denied, are mobilized politically in ways that would have seemed almost unimaginable earlier. Racism remains formidable, entrenched as a structuring feature of both US and global society and politics. Indeed it often seems impossible to overcome. Yet That’s Not the Whole Story We are so used to losing! We can’t see that the racial system is in crisis both in the US and globally. Large-scale demographic and political shifts have overtaken the modern world (racial) system, undermining and rearticulating it. During and after the Second World War a tremendous racial ‘break’ occurred, a seismic shift that swept much of the world (Winant, 2001). The US was but one national ‘case’ of this rupture, which was experienced very profoundly: racial transformations occurred that were unparalleled since at least the changes brought about by the US Civil War. Omi and I (1994) – and many, many others – have proposed that the terrain of racial politics was tremendously broadened and deepened after the War. The increased importance of race in larger political life not only grounded the modern civil rights movement but shaped a whole range of ‘new social movements’ that we take for granted today as central axes of political conflict. In earlier stages of US history it had not been so evident that ‘the personal is political’ – at least not since the end of Reconstruction. From the explicit racial despotism of the Jim Crow era to the ‘racial democracy’ (of course still very partial and truncated) of the present period … : that is a big leap, people. In the modern world there were always black movements, always movements for racial justice and racial freedom. The experience of injustice, concrete grievances, lived oppression, and resistance, both large and small, always exists. It can be articulated or not, politicized or not. These movements, these demands, were largely excluded from mainstream politics before the rise of the civil rights movement after the War. Indeed, after the Second World War, in a huge ‘break’ that was racially framed in crucial ways, this ‘politicization of the social’ swept over the world. It ignited (or reignited) major democratic upsurges. This included the explicitly anti-racist movements: the modern civil rights movement, the anti-apartheid movement, and the anti-colonial movement (India, Algeria, Vietnam, etc.). It also included parallel, and more-or-less allied, movements like ‘secondwave’ feminism, LGBTQ (née gay liberation) movements, and others. In short, the world-historical upheaval of the Second World War and its aftermath were racial upheavals in significant ways: the periphery against the center, the colored ‘others’ against ‘The Lords of Human Kind’ (Kiernan, 1995). These movements produced:

• Demographic, economic, political, and cultural shifts across the planet

• The destruction of the old European empires

• The coming and going of the Cold War

• The rise of the ‘new social movements’, led by the black movement in the US

And this is only the start of what could be a much bigger list.

A Crisis of Race and Racism?

‘[C]risis’, Gramsci famously wrote, ‘consists precisely in the fact that the old is dying and the new cannot be born: in this interregnum, morbid phenomena of the most varied kind come to pass’ (Gramsci, 1971: 276). Using the Gramscian formula, I suggest that there is such a crisis of race and racism. On the one hand, the old verities of established racism and white supremacy have been officially discredited, not only in the US but fairly comprehensively around the world. On the other hand, racially-informed action and social organization, racial identity and race consciousness, continue unchecked in nearly every aspect of social life! On the one hand, the state (many states around the world) now claims to be colorblind, non-racialist, racially democratic; while on the other hand, in almost every case, those same states need race to rule. Consider in the US alone: race and electoral politics, race and social control, race and legal order … Why don’t our heads explode under the pressures of such cognitive dissonance? Why doesn’t manifest racial contradiction provoke as much uncertainty and confusion in public life and political activity as it does in everyday experience? Are we just supposed to pretend that none of this is happening? Can anyone really sustain the view that they are operating in a nonracial, ‘colorblind’ society? The ‘colorblind’ claim is that one should not ‘notice’ race. For if one ‘sees’ race, one wouldn’t be ‘blind’ to it, after all.5 But what happens to race-consciousness under the pressure (now rather intense in the US, anyway) to be ‘colorblind’? Quite clearly, racial awareness does not dry up like a raisin in the sun. Not only does it continue as a matter of course in everyday life, but in intellectual, artistic and scientific (both social and natural) life race continues to command attention.6 ‘Colorblind’ ideologies of race today serve to impede the recognition of racial difference or racial inequality based on claims that race is an archaic concept, that racial inclusion is already an accomplished fact, and so on. Just so, persistent race-consciousness highlights racial differences and particularities. ‘Noticing’ race can be linked to despotic or democratic motives, framed either in defense of coercion, privilege, and undeserved advantage, or invoked to support inclusion, human rights, and social justice (Carbado and Harris, 2008; see also Brown et al., 2003). Obama Is he a mere token, a shill for Wall Street? Or is he Neo, ‘the one’? If neither alternative is plausible, then we are in the realm of everyday 21st-century US politics. This is the territory in which, as Sam Rayburn famously said, ‘There comes a time in the life of every politician when he [sic] must rise above principle.’ Yet Barack Obama has transformed the US presidency in ways we cannot yet fully appreciate. Obama is not simply the first nonwhite (that we know of) to occupy the office. He is the first to have lived in the global South, the first to be a direct descendent of colonized people, the first to have a genuine movement background. Consider: How many community meetings, how many movement meetings did Obama attend before entering electoral politics? But he is no more powerful than any of his predecessors; he is constrained as they were by the US system of rule, by the US racial regime, by structural racism. In addition he is constrained by racism as no other US president has ever been. No other president has experienced racism directly: Moreover, while my own upbringing hardly typifies the African American experience – and although, largely through luck and circumstance, I now occupy a position that insulates me from most of the bumps and bruises that the average black man must endure – I can recite the usual litany of petty slights that during my forty-five years have been directed my way: security guards tailing me as I shop in department stores, white couples who toss me their car keys as I stand outside a restaurant waiting for the valet, police cars pulling me over for no apparent reason. I know what it’s like to have people tell me I can’t do something because of my color, and I know the bitter swill of swallowed back anger. I know as well that Michelle and I must be continually vigilant against some of the debilitating story lines that our daughters may absorb – from TV and music and friends and the streets – about who the world thinks they are, and what the world imagines they should be. (Obama, 2006: 233) On the other hand: he has a ‘kill list’. All presidents kill people, but Obama is the first systematically and publicly to take charge of these egregious and unconstitutional uses of exceptional powers. In this he echoes Carl Schmitt, the Nazi political theorist, whose famous dictum is ‘Sovereign is he who decides on the exception’ (2004 [1922]). The drones, the surveillance, and the numerous right turns of his administration all stand in sharp contradiction not only to his campaign rhetoric, but to the anti-racist legacy of the civil rights movement that arguably put him in office. Obama has not interceded for blacks against their greatest cumulative loss of wealth in US history, the ‘great recession’ of 2008. He has not explicitly criticized the glaring racial bias in the US carceral system. He has not intervened in conflicts over workers’ rights – particularly in the public sector where many blacks and other people of color are concentrated. Obama himself largely deploys colorblind racial ideology, although he occasionally critiques it as well. Beneath this ostensibly postracial view the palpable and quite ubiquitous system of racial distinction and inequality remains entrenched. Though modernized and ‘moderated’, structural racism has been fortified, not undermined, by civil rights reform; Obama is not challenging it, at least not directly. Reframing the Discussion What should we be studying and teaching now? The list of themes I have highlighted here is partial of course, and perhaps impressionistic as well. If the argument I have proposed has any validity, then the ‘dark matter’ of race, which is even more invisible now than it was in the past – in its present ‘post-civil rights’, ‘colorblind’, and even ‘presidential’ forms – continues to exercise its gravitational pull on our politics. It continues to shape what is called (and improperly deprecated as) ‘identity politics’. The ‘dark matter’ takes on new significance as a central feature of neoliberalism, which is enacted today through the deployment of ‘accumulation by dispossession’, ‘states of exception’, state violence, and exclusionary politics – all political practices that rely on racism. Yet the legacy of centuries of resistance to these depredations, the undeniable achievements of anti-racist and anti-imperialist struggles, the extension of democracy – often tortuous and always incomplete – to peoples of color, also exerts a significant political force. Race-based ‘freedom dreams’ (Kelley again) sustain the hope of democracy, inclusion, equality, and justice in the US and elsewhere.

#### The narrative that things can’t get better or worse is ahistorical ⁠— material conditions can improve, but only through institutional engagement

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Ultimately, the historical narrative that underpins the reparations claim, a view of history that emphasizes racial conflict as primary, white supremacy as hegemonic and immutable, and black politics as insular and unitary, can only leave us with a fatalistic view of political possibilities that neglects the rich, diverse history of interracial left political struggle. Contrary to the arguments offered by Coates and others, interracial social movements, universal social policy, and an expanded public sector created the contemporary black middle class as we know it. Even as the slogan of white supremacy united various reactionary Southern elements and restored the power of the merchant-landlord class, interracial organizations fought to secure black freedom and create greater equality for black and white workers. The Readjuster Party in Virginia worked to unite workers against landed interests, and pressed for debt relief, lowered property taxes on farmers, chartered unions, established a black college, expanded public services, and removed the poll tax. Other organizations at the end of the nineteenth century posed a different interracial, left vision of American society — organizations like the Populist Party of the 1890s, the Knights of Labor, and the Citizens Committee of New Orleans. Throughout the twentieth century, struggles to expand labor rights, universal suffrage, and civil rights, and to abolish inequality, drew together diverse publics, creating concrete forms of social justice (albeit sometimes short-lived and imperfect). Whites who realized that their fates were intimately connected to those of southern blacks supported struggles against racism. Jim Crow segregation — the historical system of racial apartheid that was legitimated at the federal level by Plessy v. Ferguson’s “separate but equal” doctrine in 1896, codified by the states, and strictly enforced through violence and intimidation — began a long but certain death after the Second World War. While contemporary forms of inequality in wealth, housing, schooling, and criminal justice may bear a strong resemblance to Jim Crow, these injustices are classed in ways that the ascriptive status of blacks in the late nineteenth and early twentieth century were not. Contemporary forms of oppression are not propelled by the need to subjugate black labor to the interests of Southern planters and industrialists, but as a means of managing a growing class of Americans who are not exclusively black but have been made obsolete by hyper-industrialization, the large-scale introduction of automation and cybernetic command, just-in-time production, and other strategies of flexible accumulation in US farms and factories. We continue to reach for old modes of analysis in the face of a changed world, one where blackness is still derogated but anti-black racism is not the principal determinant of material conditions and economic mobility for many African Americans. Social exclusion and labor exploitation are different problems, but they are never disconnected under capitalism. And both processes work to the advantage of capital. Segmented labor markets, ethnic rivalry, racism, sexism, xenophobia, and informalization all work against solidarity. Whether we are talking about antebellum slaves, immigrant strikebreakers, or undocumented migrant workers, it is clear that exclusion is often deployed to advance exploitation on terms that are most favorable to investor class interests. In other words, the most impoverished and dispossessed are hyper-exploited, placing downward pressure on wage floors, worsening conditions and undermining worker power in specific sectors and throughout society. Liberal antiracist discourse further isolates the conditions of the most excluded segments of workers, separating their experiences from those of other workers, and their labor from the broader processes at work, instead of emphasizing the empirical and potential political unity of the laboring classes. Respect for difference is valued in today’s multicultural milieu, but the mobilization of different sub-strata of the working class against one another has long been a cherished strategy of capital. In our own times, this has been a vaunted campaign strategy of the New Right since the presidential campaigns of Barry Goldwater, George Wallace, and Richard Nixon in the sixties. Throughout that decade and into the early seventies, each man contributed to an ever more expansive repertoire of anti–civil rights and anti–New Left rhetoric, tugging the exposed, fraying threads of the New Deal coalition. In his bid for the Republican presidential nomination, Donald Trump has reached for the same playbook the New Right has used for decades, speaking in vile tones about the alleged criminality of Latino immigrants, talking openly about building a fence along the Mexican border, and calling for a US travel ban on all Muslims. As it has in previous election cycles, such racist patter has resonated among some alienated white rural and suburban voters, and those in less populous states, who find it easier to bash minorities, the alleged liberal media, or left intellectuals than to contest the power that neoliberal politicians, multinational corporations, and the investor class wield over their lives. Only in those historical moments when working-class and popular movements organize against these differences and around common predicaments and interests has society lurched toward greater equality. Many contemporary antiracist liberals have lost sight of this historical truth. And we will continue to lose if we follow their lead. While the currency of the antiracist position offered by Coates stems in part from the post-racial debates of the Obama age, it is also rooted in the longer, established role of the black intellectual interpreter to white publics and the transformation of the public intellectual enterprise due to the advent of social media networks and consumer-communication niches. As much as I resisted the incessant comparisons between Coates and Baldwin at first, I am starting to think they may have some value. Baldwin rose to prominence as a commentator on the crest of the struggle to defeat Jim Crow segregation, and he was an eloquent spokesman, one who called out the racism and liberal hypocrisy of Cold War America. His words rattled the affluent society and awakened American publics to the poverty and segregation in their midst. Unfortunately, the arrival of the black intellectual as gadfly and conscience of the nation in the television era bore a new set of problems. Too many well-meaning whites mistook their guilt and pleasure of self-flagellation for genuine unity with blacks and authentic antiracist political commitment — in other words, solidarity. That problem of replacing politics with public therapy endures to this day, and it flourishes in a context where social media linkages surrogate other historical forms of social interchange and collective action. Antiracist liberalism thrives in a context where the performance of self-loathing, outrage, and concern are easily traded public currency, instead of the more socially costly politics of public sacrifice and the redistribution of societal resources. Like Baldwin, I think Coates fulfills a similar historical role in assuaging white guilt. What we need instead is solidarity. I do not have any illusions about what Sanders or any other presidential candidate can accomplish, especially given the Republican control of Congress. Popular struggles and mass pressure have been the most effective means for advancing the most progressive changes in American society. But I’m also not so young and naïve to think that elections do not matter. We cannot expect to achieve greater equality through an election cycle, but elections can shape the political arena in meaningful ways and create openings for progressive social movements. Having a pragmatic, mainstream left candidate who is gaining traction by making the case for social-democratic reform is historic and consequential. Like the formation of the Labor Party in 1996, the anti-globalization movement of the late Clinton years, the mass protests against the Bush administration’s “war on terror,” the Occupy Wall Street demonstrations, the Wisconsin protests against Governor Scott Walker’s budget cuts, the 2012 Chicago Teachers Union strike, anti–police brutality struggles, the Fight for 15 campaign, and so forth, the Sanders campaign is part of a gathering tide of social struggles over the past two decades that have fought against neoliberal austerity, and circulated popular criticisms of the market forces and reactionary political choices that have created more material hardship, social angst, and debt for millions of Americans. Public-sector employment has played a powerful role in building the black middle class. Perhaps the best case against Coates’s criticisms of universal, social-democratic public policy is the progressive history of black workers and the United States Postal Service. Beginning with the Great Migration, which saw thousands of blacks leave the South for northern cities, the post office has long been a major employer of blacks — including Clyde Ross, the chief protagonist of Coates’s study of housing discrimination and the Contract Buyers Club in North Lawndale. The progressive, integrative role of the postal service and the public sector would only expand in the latter half of the twentieth century with shifting urban demography and the organized power of blacks in society writ large. The neoliberal project has decimated the public sector and harmed black workers, rolling up what had been a means of stable, unionized, livable wage employment. Moreover, the US Supreme Court’s forthcoming decision on “right to work” will likely weaken the organizing capacity of public unions by removing payment requirements for union dues. This is but the latest campaign in a broader class war, one where black workers stand to lose like all others. More than any other contest in recent memory, the 2016 Democratic presidential primary has provided us with a clear set of alternatives, a choice between the failed New Democratic policies of neoliberalism and social-democratic policies that might revitalize the public sector like guaranteed housing; free, quality education; and health care to all regardless of their ability to pay — all issues that have value among black constituencies. If we can’t take advantage of this opportunity and win a majority behind this kind of politics, anything more radical beyond it will remain just a fantasy.

#### Optimism is a better strategy than the alt ⁠— progress is possible and material conditions have meaningfully improved

Kennedy 14, Michael R. Klein Professor of Law at Harvard (Randall Kennedy, 11-10-2014, “Black America's Promised Land: Why I Am Still a Racial Optimist,” http://prospect.org/article/black-americas-promised-land-why-i-am-still-racial-optimist)

I am hopeful first and foremost because of the predominant trajectory of African Americans—a history that John Hope Franklin framed with the apt title From Slavery to Freedom. In 1860, four million African Americans were enslaved while another half-million were free but devoid of fundamental rights in many of the jurisdictions where they lived. In 1860, the very term “African American” was something of an oxymoron because the Supreme Court had ruled in Dred Scott v. Sandford that no black, free or enslaved, could be a citizen of the United States. But within a decade, the Thirteenth Amendment (1865) abolished slavery, the Fourteenth Amendment (1868) established birthright citizenship and required all states to accord all persons due process and equal protection of the laws, and the Fifteenth Amendment (1870) prohibited states from withholding the right to vote on account of race, color, or previous condition of servitude. People who had been sold on the auction block as youngsters helped to govern their locales as public officials when they were adults. In 1861, Jefferson Davis of Mississippi resigned from the United States Senate to join the Confederate States of America, which he led as president. In 1870, Hiram Revels, the first black member of Congress, occupied the seat that Davis abandoned. The First Reconstruction was overwhelmed by a devastating white supremacist reaction. But the most fundamental reforms it established proved resilient, providing the basis for a Second Reconstruction from the 1950s to the 1970s. During that period, too, the distance traveled by blacks was astonishing. In 1950, segregation was deemed to be consistent with federal constitutional equal protection. No federal law prevented proprietors of hotels, restaurants, and other privately owned public accommodations from engaging in racial discrimination. No federal law prohibited private employers from discriminating on a racial basis against applicants for jobs or current employees. No federal law effectively counteracted racial disenfranchisement. No federal law outlawed racial discrimination in private housing transactions. In contrast, by 1970 federal constitutional law thoroughly repudiated the lie of separate but equal. The 1964 Civil Rights Act forbade racial discrimination in privately owned places of public accommodation and many areas of private employment. The 1965 Voting Rights Act provided the basis for strong prophylactic action against racial exclusion at the ballot box. The 1968 Fair Housing Act addressed racial exclusion in a market that had been zealously insulated against federal regulation. None of these interventions were wholly successful. All were compromised. All occasioned backlash. But the racial situation in 1970 and afterwards was dramatically better than what it had been in 1950 and before. Today, at a moment when progress has stalled, we need to recall how dramatically and unexpectedly conditions sometimes change. Until recently who’d-a thunk it possible for the president to be an African American? In the 1980s, I used to ask law students how long affirmative action programs ought to last. Champions of such programs, seeking to ensure their longevity, would say that affirmative action would be needed until the country elected a black president. That reply would elicit appreciative laughter as listeners supposed that that formula would preserve affirmative action for at least a century. But then along came Barack Obama and with him the remark that soon became a cliché: “I never thought that I’d live to see a black president.” Obama’s election is much more than a monument to one politician’s talent and good fortune. Changes in public attitudes, law, and custom have clearly elevated the fortunes of African Americans as individuals and black America as a collectivity. Hard facts may give plausibility to the pessimistic tradition, but they make the optimistic tradition compelling. Despite the many wrongs that remain to be righted, blacks in America confront fewer racist impediments now than ever before in the history of the United States. The courage, intelligence, persistence, idealism, and sacrifice of Fannie Lou Hamer and Rosa Parks, Julian Bond and Bob Moses, Medgar Evers and Bayard Rustin, Viola Liuzzo and Vernon Dahmer—and countless other tribunes for racial justice—have not been expended for naught. The facts of day-to-day life allow blacks to sing more confidently than ever before James Weldon Johnson’s magnificent hymn “Lift Every Voice and Sing,” often referred to as the Black National Anthem: Sing a song full of the faith that the dark past has taught us Sing a song full of the hope that the present has brought us Facing the rising sun of our new day begun Let us march on till victory is won. The belief that we can overcome makes more realistic the possibility that we shall overcome. Optimism gives buoyancy to thinking that might otherwise degenerate into nihilism My optimism involves more than a sociological prediction. I am also swayed by my intuition regarding which of these hypotheses—the pessimistic or the optimistic—will do the most good. Hope is a vital nutrient for effort; without it, there is no prospect for achievement. The belief that we can overcome makes more realistic the possibility that we shall overcome. Optimism gives buoyancy to thinking that might otherwise degenerate into nihilism, encourages solidarity in those who might otherwise be satisfied by purely selfish indulgence, invites strategic planning that can usefully harness what might otherwise be impotent indignation, and inspires efforts that might otherwise be avoided due to fatalism.

### 2AC ⁠— Alternative

#### fails to create revolution

Andrews 18, associate professor of sociology in the School of Social Sciences at Birmingham City University (Kehinde Andrews, 7-10-2018, “Back to Black: Retelling Black Radicalism for the 21st Century,” Google Books)

Misuse of ‘revolution’ Radical dreams of freedom are uncompromising, totalising and demand the complete transformation of the social, political and economic order. For radicals the only solution is revolution, in order to ‘overturn’ and ‘destroy’ the existing system.21 But Malcolm warned that ‘many of our people are using this word “revolution” loosely’,22 lightly embracing radical rhetoric without truly taking on board revolutionary practice. This critique definitely applies to Black politics and theory, where to be radical or revolutionary appears to mean adopting a position that differs somewhat from the norm. Part of the misuse of the term revolution is closely tied to the idea that change must come from within before it can lead to social transformation. For cultural nationalists that is the spiritual and cultural transformation; in academia we focus on the ideas, the knowledge to produce change. While acknowledging that Cesaire’s negritude movement was ‘never intended to be a road map or a blueprint for revolution’, Kelley contends that his classic work Discourse on Colonialism was ‘poetry and therefore revolt’. He goes further to argue that the book was an ‘act of insurrection … a hand grenade thrown with deadly accuracy, clearing the field so that we might write a new history with what’s left standing’.23 Cesaire is the perfect figure to explain the limits of intellectual radicalism. As we explored in Chapter 3, his work was hugely influential, with Fanon crediting him for transforming how Black subjects of colonialism saw themselves. But we also discussed how Cesaire was a French republican to the core, who did not see liberation from France as being desirable. Negritude was about claiming Black personhood in order to integrate more equally into the Western ideal. There is nothing radical or revolutionary about the project. Just because it went against the prevailing ideas of the time (that Black people were inferior) that does not make it radical. To judge the radical nature of an argument we have to engage in the ‘new history’ that it writes, not just its condemnation of the old one. To be revolutionary also means going beyond deconstructing the present and offering abstract visions of a different future. This clearly applies to a range of post-structural theoretical reminiscences on society that even if they were written intelligibly would make little sense. In terms of Black radicalism the more common misuse of revolutionary relates to giving too much power to music and popular culture. Moten argues that ‘Black radicalism is (like) music. The broken circle demands a new analytic (way of listening to the music)’.24 He spends a lot of time making the argument that Black music with its different arrangements, soulful cries and boundary-breaking forms of expression represent the ‘aesthetics’ of Black radicalism. Kelley speaks of the ‘revolutionary nature of the blues’,25 and the power of the surreal in transforming our vision for reality. A lot of emphasis is placed on this work in the idea of desire, fantasy and soul being alternative concepts to build our understanding on rather than European ideas of rationality. To be a blues people is to embody a different form of being, and can perhaps lead to a revolutionary transformation of society based on ‘love and creativity’.26 There’s certainly something romantic about the idea of the artists, writers, poets and musicians being the revolutionary vanguard, painting a new vision for the future and calling us to its tune. However, in reality this is just an intellectual version of cultural nationalism. We know society is corrupt but instead of trying to overthrow it we seek solace in the beauty that has been created in the hideous. We can affirm ourselves by getting lost in the sorrow songs, fiction and poetry or watching the achingly beautiful choreography of the Alvin Ailey Dance Theatre. But none of this culture, no matter how beautiful or genre defying, is revolutionary. It does not pave the way for revolution, or even in itself open up possibilities. Culture is always a product of the political moment. Slavery and marronage make the blues; the New Negro movement shapes the Harlem Renaissance; Pan-Africanism calls into existence Afro-beat; Rastafari and Garveyism produce Reggae; and Black Power creates the Black Arts movement. Even the lack of cohesive Black political movements can be traced to the commercialisation and gangstaisation of Hip Hop. In a memorable quote from the James Baldwin documentary I am Not Your Negro, he explains that he was a ‘witness’ to the political events that shaped his work. The film is based on a book he was writing about Malcolm X, Martin Luther King and Medgar Evers. Unlike those three he was not a leader in any organisation, and he did not pay with his life for his commitment. Baldwin was on the side-lines, linked in but not fully part of the movements. This is not to belittle or downplay Baldwin’s role, but to recognise it. Artists document the political moment, they do not create it. It is a vital role, but not a revolutionary one.

#### Individual strategies fail to influence the world

Reed 16, Prof. of Political Science at Penn (Adolph Reed Jr., 2016, “Splendors and Miseries of the Antiracist “Left”” Nonsite, http://nonsite.org/editorial/splendors-and-miseries-of-the-antiracist-left-2)

More than a decade and a half ago I criticized similar formulations of a notion of “infrapolitics,” understood as the domain of pre-political acts of everyday “resistance” undertaken by subordinated populations, which was then all the rage in cultural studies programs. Proponents of the political importance of this domain insisted that, because insurgent movements emerge within such cultures of quotidian resistance, a) examining them could help in understanding the processes through which insurgencies develop and/or b) they therefore ought to be considered as expressions of an insurgent politics themselves. Several factors accounted for the popularity of that version of the argument, which mainly had to do to with the political economy of academic life, including the self-propulsion of academic trendiness and the atrophy of the left outside the academy, which encouraged flights into fantasy for the sake of optimism. The infrapolitics idea also resonated with the substantive but generally unadmitted group essentialism underlying claims that esoteric, insider knowledge is necessary to decipher the “hidden transcripts” of the subordinate populations; put more bluntly, elevating infrapolitics to the domain on which the oppressed express their politics most authentically increased its interpreters’ academic capital.8 I discussed those factors in my critique. However, the point in that argument most pertinent for evaluating Birch and Heideman’s confidence that the contradictions they acknowledge in BLM should be seen only as growing pains of a “new movement” is the following: At best, those who romanticize “everyday resistance” or “cultural politics” read the evolution of political movements teleologically; they presume that those conditions necessarily, or even typically, lead to political action. They don’t. Not any more than the presence of carbon and water necessarily leads to the evolution of Homo sapiens. Think about it: infrapolitics is ubiquitous, developed political movements are rare.9

#### Reject their valorization of an Afrofuturist escape ⁠— it causes suffering and alienation

Knight 18, College of the Holy Cross Associate Professor Ph.D., Harvard University A.B. Princeton University (Nadine Knight, December 2018, “A Long Way Away”: Unreachable Freedoms in Contemporary Afrofuturist Neo-Slave Narratives1 JOURNAL OF SCIENCE FICTION Volume 2, Issue 4, December 2018 ISSN 2472-0837

In this, The Underground Railroad and Splendor & Misery position themselves as warnings against the complacency of seeing freedom as tangible and assured. The 19thcentury American slave narrative traditionally enacts a trajectory from the horrors of slavery to the triumph of emancipation and the life—a home life—beyond it. Afrofuturist works, similarly, posit escape, be that literal (escaping Earth) or more metaphysical (resituating one’s frame of mind, or reshaping technoculture and the future to benefit the marginalized). Reynaldo Anderson and Charles E. Jones emphasize this liberatory promise in their definition of “Astro-Blackness,” which they position as an update of Afrofuturism “in which a person’s black state of consciousness, released from the confining and crippling slave or colonial mentality, becomes aware of the multitude and varied possibilities and probabilities within the universe” (vii). But as A. Timothy Spaulding reminds us in Re-Forming the Past, the “triumph” of escape is one beset by ongoing trials: “A free identity in the slave narrative is one wrought with the physical and mental abuses of enslavement, the cultural and familiar alienation of being stripped from one’s homeland and family…. And, in many instances, the slave narrators point out that theirs is, at best, a contested freedom” (9). In short: “Even when he or she gains the internal sense of a free identity, the external world operates in opposition to that self, making freedom always a deferred and conditional concept” (Spaulding 10). Cora and Cargo #2331 may have gained selfawareness by the end of their narratives, but they are still in many ways physically restrained and far from a certain destination: Cora confined to the wagon that hopes to head West but seems unlikely to make it, and Cargo #2331 confined to the ship that is keeping him alive but possibly setting its own course.

#### 1 ⁠— Time DA ⁠— their strategy is mired in the past and is mere imagination, which fails

Paul 13 Annie, Jamaican journalist; “A Critique of Afrofuturism…and more” Active Voice-- sharp, pointed, often witty commentary on current events in Jamaica, the Caribbean, India and the world; November 23, 2013; http://anniepaul.net/2013/11/23/a-critique-of-afrofuturism/

Thanks for heads up on the show. It would be interesting to read whatever texts accompany it to see if at last anyone has finally put forward an articulate, intelligent thesis of what exactly they mean by Afrofuturism beyond inchoate mentions of computers, Octavia Butler, and Africa. Of the tweet excerpts that you reproduced in the blog there’s only one seriously intelligent line, and it isn’t from the Afrofuturists. It is from Greg Tate where he asks: Well, what isn’t futurist about being Black in America? That’s the first brick of theory at long last, the first spark of serious philosophical thought. The rest is humdrum rehashes of anecdotes and George Clinton. The fact is that futurism (as most Afrofuturists appear to still understand it) without a serious culture of scientific adventurism is like the proverbial faith without work: it’s meaningless and dead. And, the other fact is that African cultures, no matter where they are, have yet to embrace scientific inquiry let alone adventurism. So, the science fiction remains fiction without a chance of transforming into fact the way Western science fiction consistently transforms into fact, and the utopia is nothing but dystopia. In my thinking only Tate’s twist in the tale promises to open up a meaningful philosophical platform for defining and understanding the idea of an Afro futurism: one that isn’t about “I’m interested in using gadgets and looking weird, so, I’m an Afrofuturist”, but broaches the comprehensive philosphere of a culture that survives on dreams. It’s interesting to wear Fula robes and kaftans (not even Dogon) and plastic sunglasses and perform alien descendants of Dogon astronomers visiting Earth. It would be even more interesting for people to emerge from within the culture(s), that is, African cultures be it in the West or on the continent, who have the mindset to invent Google Glass. If you see what I mean. Otherwise, to me the futurism stuff remains mostly a pitiful, mannerist “our ancestors built the pyramids” give me a break, quite frankly. (PS. Notice the peculiar dissonance between European Futurism–Russian, Italian–which was about dynamism, speed, ascension, the future, and streams of Afrofuturism that seem to be about the past, the Dogon, alienation, hurt memory, or at best, mere consumerism, and hardly about ascent or the future!)

#### 2 ⁠— ignores materiality

Daniels 16, thesis Presented to the Graduate and Research Committee of Lehigh University in Candidacy for the Degree of Master of Arts in American Studies at Lehigh University (De’Anna Monique Daniels, 2016, “Imagineering Black (Im)Possibility: Unearthing Afrofuturist Materialist Interventions,” https://preserve.lehigh.edu/cgi/viewcontent.cgi?article=3563&context=etd)

The above epigraphs of Julie Fredriekse, Audre Lorde, and Ytasha Womack address the most exciting and yet underdeveloped aspects of Afrofuturism and the hopes that Imagineering (Im)possibility employs. An under-theorized aspect of Afrofuturism that opens itself to criticism is the notion that it tends to be concerned with only the technology of race, ascent to dystopic futures (as a means of freedom) and it’s modes of speculative or science fiction to shape its claim to transcendence. Failing to take structures and bodies seriously it tends to tell the same story and depict the same map. However, just as the epigraphs above suggest when concerns of bodies are central to an analytic there becomes a severe concern with the multiplicity of material reality. Yes, aliens fringe the periphery of our future hope. Yes, time travel can be a solution to our linear understandings of time and its ability to impede notions of progress. Yes, escape from catastrophe may be possible through not yet completed means of technological advancement? However, I query what about now? How do we deal with the fact that the black women are consistently treated as other or alien? What does time travel look like now?

#### 3 ⁠— their reliance on using the US as a central site and science fiction as a genre homogenizes/re-inscribes oppression

McCutcheon 11, PhD. Associate Professor, English, Athabasca University (Mark A. McCutcheon, 2011, “Review: “Debating the Histories and Futures of Black SF,” Extrapolation Vol. 52, No. 2)

In other words, Afro-Futurism produces a kind of cyborg, anti-realist identity politics that seeks not to overcome alienation but to deepen it as a mode of resis-tance to hegemonic ontologies. Afro-Futurism's alienating effects thus take aim equally at a technocratic modern society founded on white capitalist patriarchy and the racialized terrors of slavery, and at the dominant forms of subjectivity such a society has engendered. So the consistent, conspicuous absence here of any references to Eshun, Nelson, or Rose (among others), while presumably unintended, nonetheless tends more to suppress than to enable a dialogue with Afro-Futurism—an effect exacerbated by the editor's insistent self-positioning as a "pioneer" in this field (251; cf. ix, 245). Barr's editorial self-positioning (with its problematically colonialist figuring) relates the collection's highly selective representation of Afro-Futurist history to a similarly selective representation of its territorial ambit: that is, the collec-tion frequently arrogates black Atlantic writers to black American contexts. The collection shares this kind of arrogation with Dery and Nelson, who both simply assume the U.S. supplies the defining and exemplary national site of Afro-Futurist production (Youngquist 183). In Afro-Future Females, this kind of presumptive, territorial arrogation arises among several contributors, in descriptions of sf as an unproblematically American literature, and in related assumptions about black American culture as tacit synecdoche for Other black diasporic cultures around the Atlantic or around the world. Only Dubey connects the magic-infused speculative fiction of black women writers with Paul Gilroy as well as Toni Mor- rison (35). Henton invokes "diaspora" only to describe the African-American imagination (110) and the diversities of sf form (101). That Hopkinson and some contributors to Mojo are African-Canadian (or African-Caribbean-Canadian, in Hopkinson 's case) is only mentioned in passing by Kilgore (120), who inscribes them nevertheless in "African-American involvement in fantastic fiction" (119). A salutary illustration of the collection's U.S.-centric assumptions occurs in Rogan's essay on Due and Hopkinson. Rogan reads their representations of "the reproduction of mothering" according to a provocative historical-materialist premise: that "the master/slave dialectic… reinscribe[s] itself in the relation of the black woman to capitalist patriarchy… victimized by institutionalized neglect rather than by the close scrutiny she bore as an object of property” (77). On this premise, Rogan builds an insightful reading of mother figures in the subject authors' novels. However, notwithstanding the overall perspicacity of Rogan's reading of Hopkinson according to the globalized continuities of postcolonial cultures and neoliberal hegemony, the critic is on unfamiliar ground in discussing the Canadian setting of Brown Girl in the Ring (1999), whose antagonist Rogan describes as "Canada's Premier Uttley" (90). This misreading of a provincial government leader as Canada's head of state costs Rogan's argument a relevant point about globalization: the provincial political setting makes the novel legible as a satire on Ontario's hard right turn in the mid-1990s under the neoconserva-tive regime of Premier Mike Harris, which so drastically slashed social programs and attacked minoritized groups that Hopkinson's image of downtown Toronto as a guttered inner city reads more like a shrewd urban-planning project than a post-apocalyptic dystopia.

#### Their method is only afforded to ivory tower elites and the pure “euphoria,” “jouissance,” or “sublimation” they seek to achieve is an immeasurable illusion of utopianism

Shaviro 15, Wayne State University (Steven Shaviro, 2015, “Introduction to Accelerationism,” No Speed Limit: Three Essays on Accelerationism, University of Minnesota Press)

Of course, this doesn’t mean that I am actually liberated by art from worldly concerns. The constraints of political economy can, and do, get in the way of aesthetics. A starving person is blocked from full aesthetic enjoyment. It is only when I am well fed —“only when the need” arising from hunger “is satisfied”—that I enjoy delicacies of cuisine. And it is only “as long as we find ourselves in safety” that we can enjoy sublime spectacles of danger. Beauty in itself is inefficacious. But this also means that beauty is in and of itself utopian. For beauty presupposes a liberation from need; it offers us a way out from the artificial scarcity imposed by the capitalist mode of production. However, since we do in fact live under this mode of production, beauty is only a “promise of happiness” (as Stendhal said) rather than happiness itself. Aesthetics, for us, is unavoidably fleeting and spectral. When time is money and labor is 24/7, we don’t have the luxury to be indifferent to anything’s existence. To use a distinction made by Michael Moorcock and China Miéville, art under capitalism at best offers us escapism, rather than the actual prospect of escape. The second important thing that Kant says about aesthetic judgment is that “it is not a cognitive judgment,” for “it is in itself indeterminable and unfit for cognition.” This means that beauty cannot be subsumed under any concept. An aesthetic judgment is therefore singular and ungrounded. Aesthetic experience has nothing to do with “information” or “facts.” It cannot be generalized, or transformed into any sort of positive knowledge. How could it, when it doesn’t serve any function or purpose beyond itself? And this, again, is why aesthetic sensation seems spectral to us, and even epiphenomenal. It cannot be extracted, appropriated, or put to work. Analytic philosophers of mind, frustrated by this impossibility, have spent decades trying to argue that aesthetic experience—or what they more often call inner sensation, or the experience of “qualia,” or “consciousness” tout court—doesn’t really exist. As Wittgenstein famously phrased it: “a wheel that can be turned though nothing else moves with it, is not part of the mechanism.” Later thinkers have transformed Wittgenstein’s puzzlement about inner experience into dogmatic denial that it can be anything other than an illusion. But the basic point still stands. Aesthetics marks the strange persistence of what (to quote Wittgenstein again) “is not a something, but not a nothing either!” Aesthetic experience is not part of any cognitive mechanism—even though it is never encountered apart from such a mechanism.

#### Cites Hill-Collins

Gipson 17

**(Grace D. Gipson is a doctoral candidate in the African American Studies program with a designated emphasis in New Media at the University of California Berkeley (The Future Is Black and Female: Afrofuturism and Comic Books, October, 14, 2017)** [**https://www.aaihs.org/the-future-is-black-and-female-afrofuturism-and-comic-books/**](https://www.aaihs.org/the-future-is-black-and-female-afrofuturism-and-comic-books/)**. LY. )**

**For comic book and superhero fans worldwide, the release of Captain America: Civil War on May 6, 2016 became permanently fixed in their minds. Advertised as a film that would disrupt fans’ feelings by featuring two major superheroes–Captain America and Iron Man– going head-to-head, instead this blockbuster showdown was upstaged by two new characters: the much-anticipated T’Challa/Black Panther (played by Chadwick Boseman) and a lesser known character, Ayo (played by Florence Kasumba), one of T’Challa’s security chiefs. Although audiences did not yet know her name, her presence was crystallized with one simple line addressed to the Black Widow: “Move. Or you will be moved.” Overnight this one character, who would later be revealed as a member of the Dora Milaje, an all-female security team, became a popular topic of discussion. Her character’s presence led to think pieces, social media gifs, an entry point to a comic book series, and piqued interest into her comic book background as well. She also prompted audiences to re-think the role Black women play in the superhero comic book universe. Historically, Black women have not been heavily featured in the popular comic book universes, with the few exceptions of Storm, Misty Knight, and Vixen. However, with the rise in popularity of comic books academically and cinematically, Black women and girls are beginning to have a regular presence. This popularity has sparked new inquiries between black comic book characters and Afrofuturism. Since Afrofuturism offers a way to take hold of the future, particularly in this case of the Black female, it ensures another avenue to reclaim African diasporic voices, subjectivity, and humanity. Thus, comic books can be a medium that integrates Afrofuturism as a genre by providing a fantasy setting and visual storytelling. The growing popularity of Afrofuturism and comic books within popular culture creates innovative approaches to discussing race, gender, science and technology, and fantasy. These growing relationships and narratives are worthy of further investigation. Many comic book writers set their characters to engage in Afrofuturist explorations. Various authors employ Black bodies both to disrupt narratives of disability and as technologies in themselves, to counter narratives such as the extension of the white body into explosive images of androids and cyborgs to enhance its performance. Given the insufficiency of representations of women of color, as well as disabled protagonists, in comic book culture, representations at the intersections of these two identities seem particularly important. Visualizing these identities also contributes to their normalization: it un-others them, respects their otherness, and potentially destigmatizes otherness. This disruption can be seen in Marvel Comics’ Misty Knight. After being seriously injured in a bomb attack, Misty Knight is outfitted with a bionic arm that gives her superhuman strength, near-perfect aim with firearms, and the ability to liquefy all known metals. Misty Knight’s character pushes the limits of identification and plays with the hybridity of woman and machine. Her story provides an alternative narrative that disrupts the argument that “female, disabled, and dark bodies are supposed to be dependent, incomplete, vulnerable, and incompetent bodies ... portrayed as helpless, dependent, weak.” Misty’s narrative contrasts with superhero narratives that have suggested disabilities are limitations to overcome. The use of Black comic book characters with an Afrofuturist framing also provides additional illustrations of gender, race, and sexuality in the production of science fiction. Characters represent amalgams of gender, race, and technology, such as the all-female military unit the Dora Milaje (“Adored Ones”). In Marvel Comics’ Black Panther, these women are tasked with protecting the king while armed with swords and jetpacks in the fictional African country Wakanda. First appearing in Christopher Priest’s 1998 issue “The Client,” the Dora Milaje took on a joint role as soldiers and bodyguards as well as “wives in training.” This version, although significant, is also problematic, as these women can be read as submissive warriors who are loyal to the king and must sacrifice their lives and hide their emotions. In 2016, Issue #1 of the revamped version of the Black Panther series written by Ta-Nehisi Coates and drawn by Brian Stelfreeze introduced a shift in the representation and personality of the Dora Milaje. The narrative of loyalty and dutifulness is re-configured as the women take up a mentality of resistance and freedom from patriarchy and assigned paths of tradition. In this series, the first queer African couple in mainstream comic books was introduced (Aneka and Ayo, also known as the Midnight Angels), and they were later given their own series, “World of Wakanda.” This re-introduction of the Dora Milaje narrative speaks to Audre Lorde’s radical, queer, Black feminist approach. This Afrofuturist exploration offers a way to correct past sexist and troubling backstories, particularly for Black women characters, and to imagine a new story. A reframing of the Dora Milaje, according to Coates, “creates a template for how the sexist, troubling backstories of long-standing female characters can be flawlessly course- corrected.” Afrofuturist comic books also play a role in introducing young Black girls to the Science, Technology, Engineering, and Mathematics (STEM) fields. Though most Black female comic book characters identified as Afrofuturist are adults, in 2016 Marvel Comics introduced Lunella Lafayette (aka Moon Girl), a 10- year-old Black girl super genius. Lunella’s narrative adds a youthful dynamic and shifts the perspective with regards to gender and science.1 She uses her newfound science as a survival and resistance tactic, thus presenting an alternative image of Black girlhood. Moreover, her story illustrates the power of Afrofuturist narratives to shift perspective with regards to gender and science. Women remain underrepresented in the science and engineering workforce, although to a lesser degree than in the past, with the greatest disparities occurring in engineering, computer science, and the physical sciences. A significant focus in the United States recently has been to increase engagement and interest in STEM curricula, particularly among girls and underrepresented minorities. Lunella’s character plays a role in disrupting this narrative and offers a youthful representation of Black girls in STEM fields. Narratives like Lunella’s within the comic book genre are not only notable, but crucial because they aid in creating a bridge between the gap of fiction and real-world application. In addition to bringing awareness to the insufficiencies in STEM, the character also exhibits a humanized experience of young Black girls while also celebrating their intelligence. Afrofuturism is not simply a tool of representation, but also a technique that incorporates the medium of comic books to re-craft and build a history and identity through the African diasporic women’s narratives. According to Deirdre Lynn Hollman, “Afrofuturism is black survival. It is an affirmative aesthetic and philosophic position that questions how will we survive in the future, not if we will. It asks what do we need to know, how do we need to adapt, what knowledge do we need to take with us, what new ways of being do we need to create, and how do we retain our ancestral memory.” Because of this affirmation and call for “black survival,” the Black women and girls portrayed in these comic book narratives resist “the danger of a single story” while incorporating Afrofuturism, thus offering refreshing, creative, and complicated experiences. These female voices also engage with contemporary technology, creative and alternative narratives and realities, and popular culture phenomena. Each of these characters is presented with specific challenges and unique narratives that place African diasporic female voices at the center in a world largely constructed as white and male. They also challenge how people assume Black female characters should be portrayed within popular culture—as invisible, hyper-sexualized, marginalized, and/or relegated to mammy and sidekick roles. These controlling images,** according to Black feminist scholar Patricia Hill Collins**, validate racism, sexism, and poverty and normalize their power as a part of everyday life. Disrupting these images is essential, and it is also representative of Black feminist interventions. Afrofuturism creates an outlet for technology and the imaginary to be inclusive of all races and genders. In the words of Alondra Nelson, there are still “voices with other stories to tell about culture, technology, and things to come,” and the relationship between Afrofuturism and comic books starring Black female voices is one way to create and tell those stories.**

#### Institutional engagement critical to untangle structural domain of power that reproduces black women’s exclusion---creates meaningful state reforms and empirics prove its effective---also answers institutional access.

Patricia **Hill Collins 09**. Distinguished University Professor of Sociology at the University of Maryland, College Park. “Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment.” page 277-280, https://uniteyouthdublin.files.wordpress.com/2015/01/black-feminist-though-by-patricia-hill-collins.pdf

The structural domain of power encompasses how social institutions are organized to reproduce Black women’s subordination over time. One characteristic feature of this domain is its emphasis on large-scale, interlocking social institutions. An impressive array of U.S. social institutions lies at the heart of the structural domain of power. Historically, in the United States, the policies and procedures of the U.S. legal system, labor markets, schools, the housing industry, banking, insurance, the news media, and other social institutions as interdependent entities have worked to disadvantage African-American women. For example, Black women’s long-standing exclusion from the best jobs, schools, health care, and housing illustrates the broad array of social policies designed to exclude Black women from full citizenship rights. These interlocking social institutions have relied on multiple forms of segregation—by race, class, and gender—to produce these unjust results. For AfricanAmerican women, racial segregation has been paramount. Racial segregation rested on the “separate but equal” doctrine established under the 1896 ruling of Plessy v. Ferguson where the Supreme Court upheld the constitutionality of segregation of groups. This ruling paved the way for a rhetoric of color-blindness (Crenshaw 1997). Under the “separate but equal” doctrine, Blacks and Whites as groups could be segregated as long as the law was color-blind in affording each group equal treatment. Despite the supposed formal equality promised by “separate but equal,” subsequent treatment certainly was separate, but it was anything but equal. As a result, policies and procedures with housing, education, industry, government, the media, and other major social institutions have worked together to exclude Black women from exercising full citizenship rights. Whether this social exclusion has taken the form of relegating Black women to inner-city neighborhoods poorly served by social services, to poorly funded and racially segregated public schools, or to a narrow cluster of jobs in the labor market, the intent was to exclude. Within the structural domain of power, empowerment cannot accrue to individuals and groups without transforming U.S. social institutions that foster this exclusion. Because this domain is large-scale, systemwide, and has operated over a long period of time via interconnected social institutions, segregation of this magnitude cannot be changed overnight. Structural forms of injustice that permeate the entire society yield only grudgingly to change. Since they do so in part when confronted with wide-scale social movements, wars, and revolutions that threaten the social order overall, African-American women’s rights have not been gained solely by gradual reformism. A civil war preceded the abolition of slavery when all efforts to negotiate a settlement failed. Southern states routinely ignored the citizenship rights of Blacks, and even when confronted with the 1954 Brown v. Board of Education Supreme Court decision that outlawed racial segregation, many dug in their heels and refused to uphold the law. Massive demonstrations, media exposure, and federal troops all were deployed to implement this fundamental policy change. The reemergence of White supremacist organizations in the 1990s, many of which recirculate troubling racist ideologies of prior eras, speaks to the deep-seated resentment attached to Black women, among others, working toward a more just U.S. society. Events such as these indicate how deeply woven into the very fabric of American society ideas about Black women’s subordination appear to be. In the United States, visible social protest of this magnitude, while often required to bring about change, remains more the exception than the rule. For U.S. Black women, social change has more often been gradual and reformist, punctuated by episodes of systemwide upheaval. Trying to change the policies and procedures themselves, typically through social reforms, constitutes an important cluster of strategies within the structural domain. Because the U.S. context contains a commitment to reformist change by changing the laws, Black women have used the legal system in their struggles for structural transformation. African-American women have aimed to challenge the laws that legitimate racial segregation. As Chapter 9’s discussion of Black women’s activism suggests, African-American women have used various strategies to get laws changed. Grassroots organizations, forming national advocacy organizations, and event-specific social protest such as boycotts and sit-ins have all been used, yet changing the laws and the terms of their implementation have formed the focus of change. Even the development of parallel social institutions such as Black churches and schools have aimed to prepare African-Americans for full participation in U.S. society when the laws were changed. African-American women have experienced considerable success not only in getting laws changed, but in stimulating government action to redress past wrongs. The Voting Rights Act of 1964, the Civil Rights Act of 1965, and other important federal, state, and local legislation have outlawed discrimination by race, sex, national origin, age, or disability status. This changed legal climate granted African-American women some protection from the widespread discrimination that we faced in the past. At the same time, class-action lawsuits against discriminatory housing, educational, and employment policies have resulted in tangible benefits for many Black women. While necessary, these legal victories may not be enough. Ironically, the same laws designed to protect African-American women from social exclusion have increasingly become used against Black women. In describing new models for equal treatment under the law, Black feminist legal scholar Kimberle Crenshaw argues that the rhetoric of color-blindness was not unseated by the 1954 Brown v. Board of Education ruling. Instead, the rhetoric of color-blindness was reformulated to refer to the equal treatment of individuals by not discriminating among them. Under this new rhetoric of color-blindness, equality meant treating all individuals the same, regardless of differences they brought with them due to the effects of past discrimination or even discrimination in other venues. “Having determined, then, that everyone was equal in the sense that everyone had a skin color,” observes Crenshaw, “symmetrical treatment was satisfied by a general rule that nobody’s skin color should be taken into account in governmental decision-making” (Crenshaw 1997, 284). Within this logic, the path to equality lies in ignoring race, gender, and other markers of historical discrimination that might account for any differences that individuals bring to schools and the workplace. As a new rule that maintains long-standing hierarchies of race, class, and gender while appearing to provide equal treatment, this rhetoric of color-blindness has had some noteworthy effects. For one, observes Black feminist legal scholar Patricia Williams (1995), it fosters a certain kind of race thinking among Whites: Because the legal system has now formally equalized individual access to housing, schooling, and jobs, any unequal group results, such as those that characterize gaps between Blacks and Whites, must somehow lie within the individuals themselves or their culture. When joined to its twin of gender neutrality, one claiming that no significant differences distinguish men from women, the rhetoric of color-blindness works to unseat one important strategy of Black women’s resistance within the structural domain. Black women who make claims of discrimination and who demand that policies and procedures may not be as fair as they seem can more easily be dismissed as complainers who want special, unearned favors. Moreover, within a rhetoric of color-blindness that defends the theme of no inherent differences among races, or of gender-neutrality that claims no differences among genders, it becomes difficult to talk of racial and gender differences that stem from discriminatory treatment. The assumption is that the U.S. matrix of domination now provides equal treatment because where it once overtly discriminated by race and gender, it now seemingly ignores them. Beliefs such as these thus allow Whites and men to support a host of punitive policies that reinscribe social heirarchies of race and gender. In her discussion of how racism now relies on encoded language Angela Davis identifies how this rhetoric of color-blindness can operate as a form of “camouflaged racism”: Because race is ostracized from some of the most impassioned political debates of this period, their racialized character becomes increasingly difficult to identify, especially by those who are unable—or do not want— to decipher the encoded language. This means that hidden racist arguments can be mobilized readily across racial boundaries and political alignments. Political positions once easily defined as conservative, liberal, and sometimes even radical therefore have a tendency to lose their dis tinctiveness in the face of the seductions of this camouflaged racism (Davis 1997, 264). Americans can talk of “street crime” and “welfare mothers,” all the while claiming that they are not discussing race at all. Despite the new challenges raised by the rhetoric of color-blindness and gender neutrality, it is important to remember that legal strategies have yielded and most probably will continue to produce victories for African-American women. Historically, much of Black women’s resistance to the policies and procedures of the structural domain of power occurred outside powerful social institutions. Currently, however, African-American women are more often included in these same social institutions that long excluded us. Increasing numbers of African-American women have gained access to higher education, now hold good jobs, and might be considered middle-class if not elite. These women often occupy positions of authority inside schools, corporations, and government agencies. Achieving these results required changing U.S. laws.

# 1AR

### 1AR---AT: Surveillance

#### The alt’s counter-operation against surveillance is a doomed project—it individualizes resistance to surveillance regimes which sustains and strengthens neoliberalism and turns the case

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Resistance to surveillance, especially to dominating forms of surveillance, is a vital dimension of power negotiations. As Michel Foucault observes, “Where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power.”1 Put differently, resistance is not reactive or in dialectical relationship to power; rather, it is co-constitutive of it. There are clearly many forms that resistance to surveillance can take; they range from civil society organizations like the American Civil Liberties Union challenging government spying programs in courts, on one end of the spectrum, to individuals not complying with marketers’ requests for personal information like zip codes and e-mail addresses, on the other. People are not simply passive subjects compliantly succumbing to demands for their behaviors, preferences, and beliefs to become more transparent to and controllable by others. Nevertheless, when the field for social action and identity construction is radically constricted, opportunities for effective resistance—at least effective resistance without great personal risk—are diminished. One dominant argument of this book, for instance, is that neoliberal policies and practices have transformed public spaces and rights into private ones and have individualized what might be thought of as collective problems. Demands for people to become insecurity subjects fit neatly within this neoliberal framework because these demands push responsibility onto individuals to meet security needs through consumption, regardless of the veracity of security threats or their probability of actualizing. Resistance to surveillance can also function within and therefore unintentionally reinforce these security cultures if it does not also challenge the rules that govern possibilities for resistance. To make this case, this chapter analyzes practices of countersurveillance by activists and media artists—particularly against video and closed circuit television (CCTV) systems in urban areas—and theorizes their political implications. Countersurveillance activism can include disabling or destroying surveillance cameras, mapping paths of least surveillance and disseminating that information over the Internet, employing video cameras to monitor sanctioned surveillance systems and their personnel, or staging public plays to draw attention to the prevalence of surveillance in society. In some cases, marginal groups selectively appropriate technologies that they might otherwise oppose when used by those with institutional power.2 These examples illustrate the underdetermination of technologies and suggest further avenues for political intervention through countersurveillance. However, because surveillance systems evolve through social conflict, countersurveillance practices may implicate opposition groups in the further development of global systems of control. Countersurveillance operates within and in reaction to ongoing global transformations of public spaces and resources. According to social theorists, a crisis in capital accumulation in the 1970s precipitated a shift from mass production to flexible production regimes, catalyzing organizational decentralization, labor outsourcing, computerized automation, just-in-time production, and, increasingly, the privatization of that which has historically been considered “public.”3 These structural transformations aggravated conditions of social inequality, leading to the development of new mechanisms of social control to regulate bodies in this unstable terrain. Some of the most effective forms of social control are those that naturalize the exclusion of economically or culturally marginalized groups through architecture or infrastructure. Mass incarceration of over 2.3 million individuals in the United States alone is one extreme measure of such postindustrial exclusion.4 Less dramatically, but perhaps more pervasively, fortified enclaves such as gated communities, shopping malls, and business centers have multiplied exponentially over the past decade and seem to be as prevalent in “developing” as in “developed” countries.5 Additionally, privatized streets, parks, and security services effectively sacrifice civic accountability and civil rights while increasing affordances for the monitoring of public life.6 Finally, telecommunications and other infrastructures unevenly distribute access to the goods and services necessary for modern life while facilitating data collection on and control of the public.7 Against this backdrop, the embedding of technological surveillance into spaces and infrastructures serves to augment not only existing social control functions but also capital accumulation imperatives, which are readily seen with the sharing of surveillance operations and data between public and private sectors.8 Through a range of interventions into the logic and institutions of global capitalism, countersurveillance tacticians seek to disrupt these trends in the privatization, sanitation, and elimination of public spaces, resources, and rights. While the ideologies and intentions of those engaging in countersurveillance are manifold and disparate, they are unified in the mission of safeguarding— or creating—the necessary spaces for meaningful participation in determining the social, environmental, and economic conditions of life. Because of this orientation, the term countersurveillance will be used here to indicate intentional, tactical uses or disruptions of surveillance technologies to challenge power asymmetries. In this chapter I review several countersurveillance practices and analyze the power relations simultaneously revealed and reproduced by resistance to institutionalized surveillance. The emphasis here is upon the framing of surveillance problems and responses by activists, or on points of symbolic conflict rather than physical confrontation. Thus, it is assumed that while countersurveillance practitioners may have immediate practical goals, such as circumventing or destroying video cameras, that they are foremost engaged in acts of symbolic resistance with the intention of raising public awareness about modern surveillance regimes. I analyze two categories of countersurveillance efforts—interventions into the technical and social faces of public surveillance—and then theorize the efficacy and implications of countersurveillance more generally. The data are drawn primarily from Web sites, video productions, and publications, but I conducted several interviews with activists in the United States to corroborate the critical readings offered here. The main argument is that activists tend to individualize both surveillance problems and methods of resistance, leaving the institutions, policies, and cultural assumptions that support public surveillance relatively insulated from attack. Furthermore, while the oppositional framing presented by activists (that is, countersurveillance versus surveillance) may challenge the status quo and raise public awareness, it also introduces the danger of unintentionally reinforcing the systems of social control that activists seek to undermine.